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The American Political Science Review

Vol. X

FEBRUARY 1916

No. 1

PRINCIPLES OF LEGISLATION

ERNST FREUND

University of Chicago

PRESIDENTIAL ADDRESS, THE TWELFTH ANNUAL MEETING OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION

This is a period of revaluations. The crucial tests that have been imposed within the last year upon so many nations by the stress of war have probably led most of us to question and perhaps to doubt old, and as we had believed, firmly rooted tenets and dogmas. It is true that political science has long since abandoned the eighteenth century confidence in general theories and deductions; but there were many who had cherished at least a loyalty to certain fundamental political ideals: individualism, self-government, democracy; and even these are challenged by newly emphasized factors of strength and weakness that seem to determine the fate of nations. It behooves us now to be cautious in drawing premature conclusions from abnormal conditions, and to retain some faith in principles that have not been demonstrated to be unsound.

Amidst the confusion of political values we have all been impressed with the importance and with the achievements of technique, and we may be tempted to insist upon high technical standards in government as an undisputable political ideal. Yet

we used to be tolerant of governmental imperfections in the belief that it was the temporary price we paid for more fundamental and enduring political gains, and this seems as yet to be the American political philosophy. Had a commission of economy and efficiency presided over American government from the beginning, it would tax the imagination to think of the millions that might have been saved from waste; but could there have been that spirit of individualism, that glamor of liberty, that made American institutions attractive to aliens coming to this country, and that made possible a national assimilation and consolidation which is without a parallel in history? Surely that is a political asset which no mere technical perfection of government could have won for us, and it warns us not to value the traditional essentials of American institutions too lightly.

Making all due allowance for this consideration, it is all the more necessary to insist upon high standards where the lower standard cannot be accounted for by political exigency or expediency. Concede that in rural districts the prevailing loose type of administrative organization should be continued, that is no reason why modern systems of accounting should not be installed; concede that we do not intend to give the administration the practical monopoly of initiating legislation that it has in Europe, that is no reason why private members should not have every facility to aid in the skilful drafting of measures. Or, putting it more generally, concede that governmental standards cannot be in every respect the highest, it ought still be possible to improve the purely technical processes which no government can dispense with. Where in the choice between two alternatives no political element is involved, there ought to be a united and persistent effort to secure the adoption of the better alternative.

Of all governmental activities legislation is the one in which the demand for high technical standards ought to encounter the least resistance. Loose administration serves distinct purposes and interests; defective legislation does not or only to a negligible degree. Legislation claims to make contributions to the body of jurisprudence which from times immemorial has been accounted a product of professional skill and learning, and will

therefore always conform at least to the outward show and semblance of juristic technique. Practically every statute that we know of has been drawn up by a trained official or by a lawyer; clerical routine may master pure matters of style, but would be inadequate for the task of creating legally available rights and legally enforceable obligations which presuppose a fitting of the new piece of legislation into the mass of existing statute and common law. Perhaps the term judicial availability would best designate the technical or scientific quality of legislation; and this is consistent with purposes of the most diverse kind and nature. A clear comprehension of the difference between legislation as a branch of jurisprudence and legislation as a matter of policy is therefore an indispensable condition of a proper understanding of problems of law making.

It might seem that this distinction should have gained in emphasis and practical effect through the specifically American doctrine of judicial power, and the general impression is probably that America more than any other country has brought legislation under the control of jurisprudence; but I think that a careful analysis of the past history of the judicial treatment of the due process clause shows that this is not the case, and I believe that it can also be shown that the further development of constitutional law along its present lines is not likely to result in the building up of a system of principles of legislation.

The supreme court has refused to define the meaning of due process, but its underlying philosophical concept is not likely to be disputed: it stands for the idea that it is not the mere enactment of a statute in constitutional form that produces law, but the conformity of that enactment to those essentials of order and justice which in our minds are indispensable to the nature of law. Viewed in the light of history, these essentials are few, and the legislature is not apt to violate them except through inadvertence or in the heat of political passion. There consequently appeared to the original framers of the American constitutions as little need of insuring by express constitutional mandate the general conformity of statute to law, as is now felt in Great Britain or in her colonies. Indeed they seemed willing to concede that public exigency might now and then demand arbitrary action:

thus Massachusetts, while guaranteeing in her bill of rights the application of the "law of the land" and of "standing laws," yet recognized the possibility of the suspension of laws, only requiring that it be done by the legislature or by its authority; even the taking of property for public use (without reference to compensation) might be sanctioned by the legislature; only bills of attainder and ex post facto laws, sometimes also retrospective laws, were specifically and absolutely forbidden. Massachusetts in this respect is typical; the term "due process" does not even occur in the first constitutions of the original States. The specific clauses of the bills of rights practically all dealt with issues that at one time or another had been the subject of political and constitutional controversy, and they were by no means looked upon as merely circumscribing the idea of government by law; thus in guaranteeing trial by jury, it was well understood that certain phases of law could and would be duly administered without it.

But the judicial power to declare laws unconstitutional gradually and perhaps inevitably introduced the idea of inherent limitations upon the legislative power. Practically all the early applications of that idea turned upon the protection of vested rights, which had for over one hundred years been treated as the cardinal principle of natural law wherever natural law had been systematized. Thus far then, inherent limitations merely enforced an almost universal dictate of justice. It was a very different matter to insist in the name of the idea of due process upon a demarcation of spheres of government and liberty, upon an immunity of individual action from legislative control. Until the middle of the nineteenth century no such idea was suggested by lawyers, courts or text writers. The prohibition legislation of the fifties gave the first opportunity of asserting such a liberty, but the slight attempts made in that direction found practically no judicial response. The second opportunity was given by the Granger legislation of the seventies, the first great attempt to control the traditional economic freedom; and now the supreme court, while sustaining the legislative power over railroads and warehouses, spoke in approving terms of the immunity of private business from legislative control.

This idea then grew and established itself in connection with the attacks upon labor legislation from about the middle of the eighties, and produced the doctrine of a constitutional right of freedom of contract. The true nature of this judicial control revealed itself in the decision of the New York court of appeals which annulled the first American workmen's compensation law. The point at issue was a rule of liability, a subject closely interwoven with the very elements of the concept of law; yet the court suggested an appeal to the people to sanction the principle which it declared violative of the guaranty of due process. It is well known that the appeal has been successfully made and that the court of appeals has bowed to the popular verdict. (*Jensen vs. So. Pac. R. Co.*, 215 N. Y. 514.)

Obviously, the court of appeals believed that the people of the State of New York in adopting their constitutions had intended to place certain fundamental notions of right and justice beyond the reach of the legislative power, and that the due process clause served that purpose; but that in the hands of the people themselves these notions were legitimate subjects of change with the progress of social and economic thought. This view also explains the apparent paradox that the same words bear a different construction in the state and in the federal constitution. The situation is best understood when we say that the court in the name of due process enforced fundamental policies and not merely what the United States supreme court had designated as cardinal and immutable principles of justice.

This point of view should control the interpretation of much that goes in America under the name of constitutional law. The decisions enforcing so-called inherent limitations are among the most loosely reasoned in our entire case law. There is much talk about inalienable rights on the one side and about the police power on the other; as the case may be, either denunciation of the arbitrary will of the legislature, or disclaimer of judicial superiority of judgment or power of control; practically the only criterion that is suggested is that of reasonableness, and to talk of reasonableness, when we are in search of a rule of law is to offer us when we are asking for bread, I should not say a stone, but a piece of India rubber. From the point of view of legal

science it would be difficult to conceive of anything more unsatisfactory.

But the point of view should be an estimate of constitutional organs dealing with law in transition. For nearly a century economic freedom had reigned almost unquestioned. Labor legislation was the most conspicuous manifestation of a new era of regulation of private business. The new legislation was in many respects experimental and badly worked out, some of it was premature. Legislative methods failed to command that degree of popular confidence which would be willing to dispense with further control if such control was available, and in America it was. The conservative sense of the community demanded a judicial check which had to operate under the guise of legal and not political control. The idea of a constitutional policy and corresponding rights and limitations was thus readily entertained not only by the courts, but by the great preponderance of public and professional opinion, and to a very considerable extent this opinion prevails today.

In fulfilling an essentially political function the courts were handicapped by two special difficulties: in the first place, freedom of contract was obviously not an unqualified right like freedom of religion, but necessarily required so many exceptions that in attempting to formulate it, it was impossible to avoid fluctuation and contradiction; in fact the entire concept is so vague as hardly to present a justiciable issue;—in the second place, the exercise of the judicial power was not called for until the very fact of legislative enactment showed that the strength of the constitutional policy was declining. Inevitably, therefore, this method of control created friction and dissatisfaction, increased perhaps rather than diminished by the consciousness that in a popular government courts must eventually yield to popular policies, and certainly increased by the indefensible narrowness of view displayed in some decisions.

Extreme indefiniteness however appears in the light of a wise avoidance of irrevocable conclusions, if we apply to this phase of constitutional law as a whole the test of political performance. The legal weakness of the labor decisions constitute their saving grace. No constitutional right is asserted without placing in

convenient juxtaposition a saving on behalf of the public welfare. No rule has been formulated in such a manner as to embarrass an honorable retreat, and if an inconvenient precedent is encountered there is little hesitation in overruling it. Even the brief period of thirty years, during which the courts have enforced constitutional policies, has been sufficient to demonstrate that any apprehension of a permanent hindrance on their part to any phase of legislative progress is groundless.

Upon a large view, then, of our constitutional history we are impressed with the fact that in assigning a controlling function to the courts we have after all not altered the universal character of constitutional issues: in America as well as in other countries they are, in the main, issues of power and policy, and the conformity of legislation to fundamental principles of law is too technical and inconspicuous an issue to arouse attention or discussion. As a matter of theory the proclamation of due process as a paramount and mandatory requirement might perhaps have been expected to identify constitutional law with scientific canons of legislation, but practically it has had no such result. The number of cases in which such canons have been discussed is insignificant; and not infrequently courts have altogether failed to deal with the real principle involved and calling for protection. Upon a sober view of the relation of courts to statute law this is not surprising.

The common law is a system of principles and the great majority of these principles have had their origin and formulation in judicial opinions written with a single view to searching out the truth. Legislation cannot claim to be an expression of pure principle, but of necessity embodies a considerable amount of discretion, expediency and compromise.

Even where legislation is enacted to remove common law defects and to substitute a superior rule, the difference remains that the common law was put forward in the name and in the form of principle, while the statute is put forward in the name of the sovereign will and in the form of a command: "*stet pro ratione voluntas*." In England the courts, after a period of free construction which subordinated legislation at important points to principles of equity, came to accept acts of parliament

loyally according to the letter of the legislative mandate and without questioning the validity of its underlying reason. Principles of legislation became subject to judicial cognizance only for purposes of interpretation, where the statute was ambiguous, and the principle of a clear statutory provision was entirely beyond judicial discussion. In practical effect this means that principles of legislation are without forensic or professional status or interest.

In America the theory of implied limitations altered this situation, but not nearly as much as might have been expected. The habit of enforcing implied limitations grew very slowly, and professedly remained confined to extreme cases; it was only the violation of a minimum standard of reasonableness or principle that would be deemed a justification for declaring a statute unconstitutional, and the courts never claimed a praetorian power of aiding, supplementing or correcting statute law. In the nature of things it will happen only rarely that a statute will fall below minimum standards, so that the courts will find occasion to set their own standards against those of the legislature. When they do so a judicial principle of legislation is at least by implication laid down; but it is obvious that with a scope of judicial review so limited the law reports can hardly be expected to be a repository of principles of legislation, as they are of principles of common law, and that a system of principles based upon judicial authority alone must be extremely fragmentary.

Under these circumstances it becomes impossible to identify scientific legislation with constitutional law. The fact however that American courts have undertaken to deal with the validity of legislation on general grounds remains an advantage which we should not neglect and which supplies us with material for study that is not available in other systems. The poverty of case law is offset to some extent by the greater significance of each case in the light of the history of which it forms a part. The operation of ordinary rules of law is difficult to trace, since the great mass of private acts and relations upon which they bear is wrapped in obscurity; the success or failure of principles of legislation appears however in the history and the enforcement of statutes, which are matter of public record. We may thus

be in a position to substitute for the lacking authority of judicial decision, and sometimes to set against it, the irrefutable testimony of experience and of facts of common knowledge. The history of legislation will teach us more about its principles than judicial doctrines pronounced with regard to legislation. A few examples will illustrate this observation.

In the eighties of the last century a number of States undertook to suppress the oleomargine industry entirely. Instead of merely dealing with imitations of butter, they extended their prohibitory legislation to substitutes. This legislation was successfully contested in New York, but was sustained by the federal supreme court in 1887. According to commonly prevailing criteria we should therefore conclude that by preponderance of authority no fundamental principle of legislation is violated by outlawing a valuable article of food, if the legislation deems mere restrictive regulation ineffectual to stop fraudulent practices. Yet we find that with all other conditions remaining practically the same, this type of legislation has been unable to maintain itself, and notwithstanding the judicial support has disappeared from the American statute books.

A chapter from the history of gambling legislation tells a similar story. It is matter of common knowledge that stock and produce exchanges are used for purposes of speculation which is in effect gambling. Proceeding upon the theory that a large proportion of option sales and sales for future delivery are of this character, legislation has been enacted both abroad and in this country making these transactions altogether illegal. Illinois thus made it a misdemeanor to make options of purchase or sale of any commodity, and California placed a provision in her state constitution making void all contracts for the sale of shares of stock on margin or to be delivered at a future day. This legislation was likewise contested and again the supreme court of the United States sustained the sweeping prohibition both of the criminal code of Illinois and of the constitution of California. Again it was thus recognized on the highest authority that no fundamental principle is violated by the entire suppression of transactions which may serve valuable and legitimate interests provided the legislature believes that certain

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dangers to the public can not be otherwise successfully dealt with. Prohibition thus having been vindicated from the point of view of constitutional law, it is instructive to note its failure to vindicate itself by the test of practical experience. In order to protect legitimate business transactions it was found necessary in Illinois to amend the criminal code, and in California to amend the constitution, and the law was brought into harmony with the contentions that had failed to prevail in court. It is hardly necessary to add that prohibitory laws of similar type have long since disappeared from foreign statute books.

It is entirely proper to set against a doctrine of constitutional law resting upon a legal decision, even of the supreme court, the striking consensus of widely separated jurisdictions in abandoning policies imprudently adopted and which experience proved to be intolerable. Only a theory of judicial infallibility can continue to treat prohibitions thus discredited as valid forms of exercise of legislative power. Why, in the light of the history of legislation should we not accept the principle that functions and activities of genuine economic value must not be destroyed by reason of the possibility of their abuse where absolutely vital interests of the community are not at stake, but that the danger of abuse must be met by regulative or restrictive measures? This indeed is but a principle of common sense. It needs to be emphasized only because it failed to receive the supreme judicial sanction. And while in a sense obvious and commonplace, it may still be claimed for the principle that it has a more tangible content than mere phrases about liberty and property, reasonableness and the public welfare.

The history of the criminal enforcement of the Sherman law is likewise instructive. In 1890 Congress created the hitherto unknown offense of monopolizing an industry. It did not define the offense, nor has any one since been able to define it. Whether an organization like the Harvester Company is a contribution to the economic efficiency of the nation or a violation of the law of the land is a question which the Supreme Court takes two years to consider, and the erroneous private decision of which subjects to the risk of fine and imprisonment. Such

uncertainty in a penal statute, the Supreme Court has held, does not render it unconstitutional. Common sense tells us that such legislation is contrary to sound principle, and history confirms common sense, for the criminal enforcement of the Sherman law, backed by all the financial and legal resources which a powerful government could command, has been an almost absolute failure. What success the government has had in enforcing the act, has been through the power of proceeding in equity which was an afterthought and almost an accident in the preparation and enactment of the law. And even this phase of the law is likely to be superseded by the more specific methods provided by the legislation of 1914. If the constitutions demand certainty and particularity in indictments, precisely the same principle demands common certainty in the statutory definition of an offense. The strong demand for a codification of the criminal law both in America and on the continent of Europe was largely inspired by the horror of undefined offenses which also found expression in the French Declaration of Rights of 1789. Unjust to the defendant, the vagueness of a criminal prohibition is also disadvantageous to the government, for the sense of the injustice of the law will lead both juries and courts to minimize or neutralize its effect, and will diminish the vigor and confidence of official enforcement. The testimony of authorities charged with the administration of labor laws is unanimous to the effect that generic requirements in factory acts are from this point of view undesirable. Again it is the success or failure of statutes, and not the ruling of a supreme court, that should determine the true standard of legislation.

It would perhaps be unfair to call the three examples from the history of legislation which I have given somewhat at length, typical cases. They are exceptionally valuable because they illustrate principles of legislation that have enforced themselves in spite of judicial decisions by the sheer force of their soundness; but to conclude that every sound principle must enforce itself automatically would be to assert that unwisdom or injustice cannot prevail in this world, which would be unwarranted optimism. But the examples illustrate the difference between a principle of legislation and a doctrine of con-

stitutional law, and incidentally show which is theoretically as well as practically the more valuable.

The history of workmen's compensation in New York shows that sound principle may also prevail over judicial doctrine where the final outcome vindicates instead of disproves the validity of legislative action. In any event a pointed issue between principle and constitutional law is exceptional, because legislative good sense will as a rule keep statutes well above the lowest level of performance that courts will tolerate, and because the observance of superior and really adequate standards is not, and it should be added, as a practical matter, cannot very well be insisted upon by the courts. Inferior standards however undoubtedly account for the readiness with which courts have been in the habit of entertaining the plea of unconstitutionality.

It would be a profitable task to examine from this point of view the labor legislation that has appeared to American courts as inconsistent with constitutional rights. While the reasoning of the courts frequently remains unconvincing, and while they operate with doctrines or concepts that cannot stand close analysis or that sooner or later will have to be abandoned, it is also true that many of the statutes annulled hardly deserved a better fate than they met. Very generally labor legislation has failed in one of the most vital principles of sound legislation, namely in the proper correlation of the various elements of a complex situation. Reciprocal obligation is of the essence of employment. A statute enacted at the request of labor interests generally seeks to redress some injustice or grievance; but very often the practice which employers are forbidden to continue has some element of justification in the shortcomings of labor; and a mere one sided prohibition without corresponding readjustments leaves the relation defective with the balance of inconvenience merely shifted from one side to the other. Under such circumstances courts are much inclined to assent to the claim that there has been an arbitrary interference with liberty or a violation of due process, a claim which in that form is untenable. Thus the practice of paying coal miners accord-

ing to weight ascertained after passing the coal mined through a screen in order to eliminate the inferior small size output, appeared to the miners as a grievance which they sought to remove by compelling the weighing of coal before passing it through the screen. This legislation has generally been declared unconstitutional as inconsistent with the freedom of contract; the real objection to the coal weighing acts was that, as the supreme court of Ohio pointed out, the former injustice to the miner was proposed to be remedied by another injustice to the operator whom the law sought to compel to pay the miner irrespective of the quality of work and product. Under the new constitution of Ohio expressly allowing coal weighing legislation, a new law has been enacted upon the recommendation of a commission which provides for the determination of a maximum permissible percentage of impurity, thus seeking to arrive at a fair compromise between conflicting interests; and this legislation the federal supreme court has recently sustained. (Rail River Coal Co. vs. Yapple, 236 U.S. 318.)

Within the last year the supreme court has been criticized for annulling for the second time legislation prohibiting employers from making membership in labor unions a ground of discharge. Probably the last word has not been spoken upon the sacrosanct nature of the right to "hire and fire," as it is called, but no sympathy should be wasted on legislation which seeks to protect a labor union without in the least considering the need of protecting the employer against the abuse of its power. Some time perhaps our legislatures will come to understand that a fair measure for the protection of the right of membership in labor unions involves the recognition of obligations and restraints, and not until then will the regulation of the right of discharge be presented to the courts upon its merits.

The supreme court has not yet passed upon the constitutionality of minimum wage legislation. In the present temper of the court toward social legislation for women a favorable decision is not unlikely; but we shall remain unenlightened as regards a minimum wage for men. Unfortunately, this issue, too, will be presented in an uncorrelated condition: the

English coal mine minimum wage act provides for rules with respect to the regularity and the efficiency of the work to be performed, but a similar provision is lacking in American statutes. A minimum wage logically requires a minimum service or return, and without this element of reciprocity, it is impossible to judge fairly of the justice or injustice of wage regulation. The issue of abstract power is misleading and perfectly barren.

If correlation mean more carefully measured justice, what I should call the principle of standardization stands for the other main objects of law, certainty, stability, and uniformity. More particularly standardized legislation means above all three things: conformity to established scientific truth, a certain constancy in relations and in rates of progression, and the avoidance of excessive or purposeless instability of policy. I cannot here develop these ideas in detail. With regard to the element first stated, a purely practical observation must suffice: legislation has occasion to apply the conclusions of physical and social sciences; but a system of principles of legislation must recognize that the data of those sciences are foreign to its own province; a science of legislation should confine itself to two tasks: to work out methods and processes which will place legislators in possession of the fullest available information and facilitate the application of data thus obtained; and to find and establish the most available and effective modes of securing conclusions that have been established by other sciences, in the form of rules of law; the formulation of protected interests as legal rights is a purely technical problem which is of the essence of constructive jurisprudence, and to which thus far practically no systematic thought has been given. The training of a lawyer, while indispensable, is entirely inadequate for this task, as may be readily proved by the drafting defects of statutes "penned" by great judges and lawyers; and it is perhaps at this point that the greatest opportunity presents itself for new and fruitful work.

It is also necessary to guard against misunderstanding when stability of policy is named as one of the important aspects of standardization. Where policies are controverted, it may be

plausibly contended that a ready response to the popular will is preferable to stagnation, and it is perhaps also true that frequent change is in some cases merely the consequence of the American habit of introducing new legislative ideas in the form of tentative statutes which require repeated amendment until a satisfactory form is found. The plea for standardization relates to cases in which instability serves no particular purpose. However controversial the main object of a bill, there are always matters incidental to it upon which there is no strong partisan feeling, and upon which the only legislative desire is to do the right thing. As to this there may be theoretical differences of opinion, but rarely any great practical difficulty in reaching an agreement. There is then every reason why this subsidiary and technical detail of statute law should be determined in a uniform manner, i.e., should be standardized. We should consider it absurd if every statute were to create its own judicial procedure for the litigation of controversies arising under it; yet to a very considerable extent this is done with regard to penal provisions and the machinery of administration, at least in state as distinguished from federal legislation. In France and Germany a simple executory clause is sufficient to make an existing administrative apparatus, together with a highly developed administrative code, available for the carrying of a statute into effect.

It is theoretically possible to standardize administrative clauses of statutes by framing them for each statute upon uniform principles, or better still, upon uniform models; but the simpler method is to codify such clauses as separate acts, by analogy to existing practice and procedure codes, and then incorporate them into statutes by express or tacit reference. Such separate enactment would concentrate upon technical provisions an attention which they rarely receive when they appear as the subordinate detail of the important principal subject matter of a bill, and when at the worst they lend themselves admirably to the perpetration of jokers, and, at the best, follow without much thought previous precedents. Where in exceptional cases, as e.g., in connection with the Sherman law, we can trace somewhat the ori-

sult is that the principle of judicial rule or justice is the minimum, the principle of legislative rule or justice, the maximum of reciprocal concession. In America this contrast is obscured and modified by a number of factors: the great authority and influence which judicial thought, particularly in constitutional matters, exercises over the legislature through its lawyer members, and which constantly tends to make the constitutional or minimum standard of rights the normal standard for purposes of legislation; the fact that after all the courts represent the highest type of training in our civil service while the legislatures do not; and the spirit of extreme jealousy with which the legislature guards public rights against the apprehended encroachments of privilege and of corporate power, and that has led it occasionally into considerable injustice to private interests. To estimate fairly the relative value of judicial and legislative action in developing principles of legislation, we should study conditions where both are at a fairly equal level of spirit and of performance; even in a matter which appeals so strongly to courts of justice as the allowance of a judicial remedy against administrative action, it will be found that the legislative rule laid down by the Prussian administrative code is more favorable to private right than the practice of American courts.

If it is true that principles of legislation can become operative only through the practice of legislation it should also be recognized that the knowledge, the painstaking care, and the restraint which their application involves, presuppose professional assistance in the preparation of bills, professional in the sense of being trained in the work of statute making, not merely trained in the common law. The establishment of drafting bureaus by state after state will be perhaps the most potent agency in creating high and uniform standards, provided they are permitted to develop and render service in accordance with the importance of their functions.

I am also convinced that here is a great field for constructive work by university law schools and departments of political science; without them the science of legislation must remain inarticulate; for all over the world drafting officials are too busy to elaborate fully the principles upon which they act. The books

of Sir Courtenay Ilbert are the mere beginning of a literature. From the purely professional point of view of preparation for the practice of the law, this study has of course a narrower range of practical application than that of common law principles; but this defect is offset by the wider outlook that it offers, the quite special training in constructive legal thought which it affords, and the great intrinsic interest and importance of its material. It is moreover only by such a study that lawyers will learn to appreciate the fact that it is not judicial thought alone that produces and develops law.

It should not require many words to show the practical value of a recognized system of principles of legislation. Fully elaborated it would mean, that, given a clear understanding of the essential points of a policy, the work of translating that policy into the terms of a statute might be safely left to experts. The results would be a great economy of legislative time and effort; a diminished risk of technical defects, and of what are popularly known as "jokers," and a much greater facility in the working of the popular initiative, if it be thought desirable to continue or expand that form of legislation. The standardizing of legislative methods and provisions should also gradually raise the level of legislative performance and increase popular confidence in the legislature, and ultimately make for a reduction of constitutional provisions and restraints. There is a growing conviction that constitutional limitations are an evil, though as yet a necessary evil, and that the course of true progress is toward a flexible instead of a rigid system, a system of inherent instead of imposed guaranties, which will allow the mobilization of every legitimate legislative power in case of need. No great nation, nor for that matter, any live community, can afford to be tied by dead hands, or to have its policies mapped out generations ahead; but however great the emergency, a free people may well insist that whatever changes may be necessary shall be brought about under observance of that order and with that respect for right and justice which the world knows as law and which we happen to call due process. This is what constitutional government ought to mean, and this can be accomplished only by a system of principles of legislation.

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THE ATTEMPTED REVISION OF THE STATE CONSTITUTION OF NEW YORK

GILBERT GIDDINGS BENJAMIN

State University of Iowa

The American people, especially in the eastern portion of the United States, are averse to political and social change particularly in institutions that have existed for a long period of time. A recent critic¹ of American life has the following to say as a reason for this attitude of the American people:

"Among the many characteristics which foreign observers have ascribed to Americans are two about which there has been little difference of opinion. We are good-natured and we are individualists. Sermons have been preached against our good nature, so we need not dwell upon it. Much more important is our individualism—our absorption in individual interests and our reluctance to undertake things in combination with our neighbors or through the government. That individualism is an American characteristic is proved by a number of familiar facts. Thus the phrase 'social reform,' which in other countries suggests comprehensive plans of state action, is still usually associated in the United States with the welfare work of private corporations, private endowed schools of philanthropy. . . . Again, the coöperative movement which has made such signal progress in Europe, is in its infancy here. Finally, socialism, the extreme antithesis of individualism numbers fewer converts relatively to the population in the United States than in any other country of the Western World. Our forefathers wrote their individualistic creed into our federal and state constitutions As interpreted by the courts, a significance has been given to these constitutional rights that has

¹ Seager, H. R., *Social Insurance*, pp. 1 ff.

seemed at times to make a fetish of the merely formal freedom of the individual. Thus it is not too much to say that Americans are born individualists in a country peculiarly favorable to the realization of individual ambitions and under a legal system which discourages and opposes resort to any but individualistic remedies for social evils."

Publicists and students of political science have long noted the weakness of the American federal and state governments in their reliance upon the theory of the separation of powers; such students have realized that the English system of cabinet government in which the executive is a part of the legislative branch of the government is in many ways superior to our own. This fact noted by students of government is just beginning to be observed by our law makers. Prof. Henry Jones Ford, in a notable article in *Scribner's* for January, 1911, attributes to the worship of Montesquieu's theory of the separation of powers, first promulgated in his *Spirit of the Laws* in the middle of the eighteenth century, a great share of the political corruption existing in our public life. To quote him in part: "It is the inherent defect of the Montesquieu scheme on the point of efficiency that first prompted the departure from it known as the Galveston Commission plan, the influence of which is fast expelling the doctrine from municipal constitutions. . . . As soon as the break begins anywhere it will spread everywhere in forms of state government just as it is now doing in forms of municipal government. The United States is now the only part of the world in which Montesquieu's doctrine still clogs the democratic movement of the age, and it is doomed to succumb to the insistent demand now made everywhere for efficiency of government. . . . The men now going out of our universities, the generations soon to take over the management of affairs, have escaped from the eighteenth century and its shallow philosophy, and with their gradual advent to power, the Montesquieu doctrine will be excluded from our state forms. . . . It has lingered longest in the United States owing to the intense political conservatism which marks the national character and which is on the whole a salutary instinct,

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and that instinct may be trusted to make the impending reconstruction of our forms of government gradual and safe."

This belief in the individual at the expense of the state; the influence of Montesquieu's political philosophy of the danger of uniting the executive and the legislative branches of government; the innate conservatism of the American people—all these have lain like dead hands upon any attempts to change our state governments. Another factor which has been preventive of change is the fear of the people of giving too much power to the executive branch of the government. Bryce, in his "American Commonwealth," attributes this fear to the influence of Puritanism in its disbelief in man. Other writers have shown that this distrust in the governor and belief in the legislature were due to the continued conflicts between the colonial governors and the legislatures. Madison, in the convention of 1787, said that "the executives of the States are in general little more than ciphers; the legislatures, omnipotent." The governor could not initiate legislation and only had the power of the veto. Recently, however, the people have come to fear the legislatures and look upon the governor as the representative of the people. This has been due in part to disclosure of conditions in our state legislatures and in part to the attempts of state executives to obtain proper legislation and finding themselves blocked by the bi-partisan machinery of the legislature, have taken the initiative in forcing legislation. Several examples will illustrate this: the careers of Governors Folk of Missouri, Cummins of Iowa, Hughes of New York, and Wilson of New Jersey, brought to the people's attention the weakness in the administrative powers of government. Former Governor Hodges of Kansas has been advocating the commission form of government for the State. Advocates of simplicity in government and all others, such as the short ballot propagandists, who have attempted to reconstruct the state government, says Professor Beard of Columbia, have been accused of "attempting to lay profane hands on the Ark of the Covenant. They were met with shrill cries about the gods, the sacred oracles, the Elysian fields, the fathers; the separation of powers, and the

bi-cameral system. From Montana or Wyoming came the solemn warning of the governor that the executive appointment of the state veterinarian smacked of monarchy."

That such reconstruction is bound to come is indicated by the present-day watchwords of efficiency and social service; by the discussion of the need of change by students of government; by the appointment of commissions in several States to study ways and means of improving the state government; and by the experience gained as a result of the commission form in our cities.

One cannot understand the proposed new constitution of the State of New York unless he knows that similar changes in state government are wide-spread and unless he is conversant with something of the recent history of that State.

Dating from the insurance examination in 1906 and the consequent election of the prosecutor, Mr. Charles Evans Hughes, as governor, the people of the Empire State came to realize that some changes were necessary in the character of their state political institutions. Governor Hughes found it necessary to go to the people themselves in order to bring into effect the laws and reforms which he advocated. The insurance investigation disclosed a condition of corruption in the state legislature such as the public had long known to exist in its cities. Mr. Hughes was elected governor in 1906, and was re-elected in 1908, but did not serve out his term. As a result of the disclosures during the administration of Governor Hughes and the division in the Republican party, a Democrat, John A. Dix, was elected governor in 1910. The latter, at the time of his inauguration indicated his intention to return to the government of the fathers; declaring that he would live up to the separation of the powers and that there would be no encroachment by the executive upon the legislative branch of the government. As a result, such a reign of graft ensued as would have made the days of the *House of Mirrh* blush for modesty. In 1912, there were three party candidates for governor, the Progressive, the Republican, and the Democrat. The latter nominated William Sulzer, who was elected. Then came his impeachment and

the consequent seating of the lieutenant governor as governor. The investigators appointed by Sulzer as governor and the later impeachment proceedings disclosed the fact that the bi-partisan machine was still in existence. There was a consequent reaction against the Democrats and the election of Mr. Charles A. Whitman, the district attorney of New York City, as governor followed.

Both Republicans and Democrats in their platforms declared that if a new constitutional convention should be decided upon by the electorate, they would introduce a shorter form of ballot and would generally simplify the government in order to bring about greater efficiency. The Democrats expected to elect a majority of the delegates to the constitutional convention, due to the character of the administration of Governor Glynn and the split in the Republican ranks. As will be readily recalled, there was a reactionary wave throughout the country, and as a result Mr. Whitman was elected as governor of the State of New York.

The question of a constitutional revision should not have come up until 1916, but it was decided by a small majority to have a convention for that purpose. As a result of the change in sentiment, 116 Republicans and 52 Democrats were elected to the constitutional convention. The delegates chosen belonged to the conservative, rather than the so-called progressive, wing of the party. Among the Republicans the best known were Senator Elihu Root, who was elected president of the convention; former Attorney General George W. Wickersham, who became floor leader of that party; former Mayor of New York City Seth Low; President Jacob Gould Schurman of Cornell University, who was one of the vice-presidents; former State Senator Edgar T. Brackett, leader of the up-state forces; and Mr. William Barnes, Jr. Among the Democrats, the leaders were former Justice of the Supreme Court, Morgan J. O'Brien; former Lieutenant Governor William F. Sheehan; Delancey Nicoll and John B. Stanchfield, famous as corporation attorneys; Lieutenant Governor Robert F. Wagner, and Alfred E. Smith, Speaker of the Assembly, leaders and representatives

of the Tammany forces. No Progressives were elected. There were 134 lawyers out of a membership of 168 and the majority of these were of the conservative wings of their respective parties. Several were men of national reputation.

The convention was organized after the plan of congress and committees were appointed to report later to the convention. Some of the chairmen of the committees were William Barnes Jr., chairman of the committee on legislative powers; Seth Low, chairman of the committee on cities; former Secretary of War Henry L. Stimson, chairman of the committee on finance; Mr. Louis Marshall, chairman of the committee on conservation; and George W. Wickersham, chairman of the judiciary committee. These committees held hearings which were open to proposals by the public either through representatives or in person.

Many of the articles in the revised constitution were either drawn up or suggested by certain organizations, such as the Short Ballot organization, the American Association for Labor Legislation, the City Club of New York City, and the Bureau of Municipal Research. The latter published a summary of the entire administrative bodies of the State in a volume entitled, *The Government of the State of New York: Organization and Functions*. It also arranged for several public men to appear before the convention. Among those who appeared were President A. L. Lowell of Harvard University; former President William H. Taft; John J. Fitzgerald, chairman of the congressional committee on finance; Dr. Frederick A. Cleveland, an authority on the making of a budget; and President F. J. Goodnow of Johns Hopkins University. The members of the convention were provided with a résumé of all parts of the proposed constitution; with various proposed amendments of the last ten years; with a digest of all other state constitutions; and with pamphlets giving information respecting the organization of city government; and the various expenditures of the State and the functions of its officers; and with such other data as would enable the members of the constitutional convention to understand what the problems were and how they were to be met. The convention opened April 4 and completed its work

September 4. Some seven hundred and twenty-five amendments were proposed. Of these some six hundred failed in committee. In all, only thirty-three amendments were finally adopted. The majority of the amendments that were finally accepted were adopted by members of both parties. The final draft was adopted by a vote of 118 to 33. The opposition was composed of up-state Republicans and Tammany Democrats. The former were opposed to the constitution on the ground that it weakened the power of the legislature; the latter, because they claimed that the home rule provisions of the new constitution were "unsatisfactory."

The most unique provision of the revised constitution was that which deals with the executive. As has already been shown, the chief weakness in structure in our state constitutions is that which has to do with the functions and powers of the executive branch of the state government. The powers and functions of the governor are found in Article IV of the revised constitution. The governor's salary was increased from \$10,000 to \$20,000 a year. This article further provided that in case the office of governor be vacant, or during impeachment proceedings, the governor should be succeeded by the lieutenant governor. It further provided for a regular succession to the gubernatorial chair by making the temporary president of the senate and the speaker of the house successors respectively, when that office might be vacated by the inability of the lieutenant governor to act.

On the first day of January, 1915, there were 152 departments, bureaus and commissions that constituted the executive branch of the state government. Many of these overlapped each other in jurisdiction and conflicted in operation. The number of officers gave opportunity for corruption to the machine politician and the spoilsman. No one knew exactly what the functions of each of these boards and officials were. Article VI of the revised constitution reduced the number of elective officials from seven to four and created seventeen general departments. It forbade the legislature to create any new general division outside of the departmental system outlined in the constitution. The only elective officers named by this article

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were the governor, lieutenant governor, comptroller and attorney general. Under the old constitution there was really a seven-headed government. None of the members of the governor's cabinet was responsible to the governor. It was hoped by this new provision to bring about a responsible form of government. The article providing for this change in government was adopted by a vote of 125 to 30 in the convention. The commissioners of departments, such as the department of public utilities, conservation, civil service, and labor and industry, were to be appointed by the governor, by and with the advice of the senate. It was thought that as these departments had legislative and judicial functions they should not be considered purely as executive departments. The department of education was to have a head as formerly, and he was to be appointed by the state board of regents.

It was hoped by the concentration of power in the executive department to bring about the following results:

1. A great saving in taxes by the elimination of unnecessary boards or commissions.

2. By decreasing the number of departments almost ten-fold, it would increase their responsibility to the governor, whose power of appointment and removal would have been greatly enlarged.

3. It would provide a system of large departmental officers to whom the governor could look for aid in making the budget and to enforce economy in expenditures.²

"The functions of these departments are so classified that there shall be no duplication of activity by two or more departments relative to the same subject."³

All appointed heads of departments might be removed by impeachment in the same manner as the governor, or by the senate by a two-thirds vote of all the members elected thereto. The officials and boards appointed by the governor might be removed at his discretion.

² See article by Frederick C. Tanner, chairman Committee on Governor and other State Officials, *N. Y. Times*, October 17, 1915.

³ "The Revised Constitution."

All students of government are agreed that a scientific budget system is a *sine qua non* of efficient government. The system adopted by the new constitution was necessarily a compromise. The establishment of such a system was worked out by the Bureau of Municipal Research under the guidance of Dr. Frederick A. Cleveland. Under the former system of appropriations, the estimates for the next year were made up by the 150 boards or commissions. They were sent to the legislature where they were considered privately in committee rooms and were brought into the legislature during the last days of its session and were hurried through. In this way millions of dollars were spent without the men who voted for the bills appropriating such millions knowing for what they were voting. Under the new system, the estimates of all administrative departments were to be first submitted to the governor and then revised by him. He is to formulate a budget showing how much money is needed; where it is to come from; with a balance sheet of the State's resources and liabilities and statements of the expenditures of past years. This budget must be transmitted to the legislature not later than the first day of February. He and his departmental heads may appear either independently or on call of the legislature to explain or defend items contained in the budget. The legislature can not increase, but may reduce or strike out items for purely administrative purposes. The governor may amend items as he sees fit until the legislature has taken final action on the budget, and he may veto items appropriating moneys for the legislature or the judiciary. This would be a complete executive budget were it not for the provision that the legislature may add new items to the governor's proposals by special law subject to the executive veto; also it extends only to appropriations for state administrative purposes. It leaves the so-called "pork-barrel" appropriations outside of the budget. The constitution tried to prevent the waste due to such appropriations by making a provision that hereafter no public money should be appropriated for the construction of any work until the plans and estimates of the cost of the work were filed with the superintendent of public works, together with

a certificate by him as to whether or not, in his judgment, the general interests of the State then required that such improvements should be made at the expense of the State.

Another proposed financial reform was that which had to do with the payment of debts contracted for public works. Twenty years ago, the State of New York had comparatively no state debt. Today the State has a debt of \$186,000,000 and a contracted authorized debt of \$231,000,000. The custom has been to issue bonds for the building of public works. The new plan contemplated the issuance of serial bonds to replace the old sinking fund system by which a loan was not paid off until the end of the period of years for which it was issued. With serial bonds if the issue be for twenty years, one-twentieth of the issue must be paid off each year. The control of the vast sinking funds gave an immense political power to the official having charge of them. He could invest in the securities of any town, village or city he wished to favor. It has been estimated that if the present canal debt of \$118,000,000 had been issued in serial bonds instead of in sinking fund bonds the State would have been saved \$46,000,000 in the cost of settling that debt and interest. The proposed constitution gave authority to refund present sinking fund bonds with serial bonds and it has been estimated if the canal debt be thus refunded the State will be thereby saved \$30,000,000. Under this provision of the constitution the life of bonds shall run no longer than the estimated life of the proposed improvement.

Judiciary. Article VIII of the constitution deals with the judiciary. It was claimed by the adherents of this article that it would simplify judicial procedure. The chairman of the judiciary committee in the convention was former Attorney General George W. Wickersham. In a letter to the *New York Times* under date of October 30, 1915, he said:

"Among the most serious problems before the convention were those which affected the administration of justice in the State of New York. They involved questions of procedure and questions of judicial organization. They required a study of methods of removing just complaints of delays—undue delays,

and unnecessary expense in the administration of justice. . . . The Judiciary Article, for example, received 135 affirmative votes and only 3 negative votes. Among the former were those of lawyers of every class."

Dr. Lyman Abbott said of this article:⁴

"The new constitution directs the legislature to adopt a simple code, to make no changes in it for a space of five years and thereafter only every five years, and to make such changes only on the report of a commission appointed to report what changes, if any, are necessary, but the courts are empowered to make such modifications and amendments as they deem necessary. This amendment secures two objects: first, simplification in legal procedure; second, that simplification worked out in its details by experts upon a well-considered basis.

"The new constitution further reduces the number of appeals, makes some increase in the number of judges, especially in New York City, where the courts have found it impossible to keep pace with the accumulating business, and adds one provision, which has been grossly misreported, but which, it seems to me, should commend itself to any one who is at all familiar with legal procedure. To relieve themselves of the burden of taking detailed testimony in cases tried before the court the judges have long exercised the right to appoint referees to take such testimony and report the facts, with the testimony, to the court for its action. These referees and the commissioners similarly appointed by the courts to conduct condemnation proceedings have been paid by fees. As every session brings a fee to the referee's pocket, he has at least no interest to expedite the proceedings and reduce the number of sessions. During the year 1914 there were 1700 appointments of referees in New York City alone. . . . The fees of those appointed for condemnation proceedings amounted to nearly three-quarters of a million dollars.

"The new constitution authorizes the legislature to create, in the place of these referees, commissioners paid by salaries,

⁴ N. Y. *Times*, October 24, 1915.

who will exercise substantially the same functions as the referees paid by fees. These commissioners are not to be allowed to engage in the practice of law while they are fulfilling these quasi-judicial functions."

"The legislature may confer upon any inferior local court power to try without a jury offenses of the grade of misdemeanor," and may "establish children's courts, and courts of domestic relations. . . . In the exercise of such jurisdiction such courts may hear and determine such causes with or without a jury, except those involving a felony."

Home Rule. Provisions were made in the revised constitution for granting to cities a limited amount of home rule. The committee, of which Seth Low was the chairman, was aided in its drafting of these provisions by several outside organizations, notably the City Club of New York City, the Municipal Governments Association, and the Conference of Mayors of the State. As in the case of many other provisions, those dealing with city government are compromises, and as is usually the case with a compromise, they satisfied neither side.

Home Rule. ARTICLE XV. "Every city by this article is granted exclusive right to manage and regulate and control its property, affairs, and municipal government, subject to the power of the legislature to enact general laws applicable alike to all cities. Cities are empowered to fix the number, power, and pay of all employees of counties situated within a city, except in the district attorney's office and in courts of record.

"Cities are empowered to amend or adopt new charters, subject to the power of the legislature to reject any charter amendment which changes the framework of the city government or makes restrictions as to contracting debts."

"No laws may be passed by the legislature applying to any one city, except when those laws deemed peculiar to one or more cities, have been submitted to the vote of the cities affected. The legislature may grant additional power to the cities. The powers of the legislature to pass laws regulating matters of state concern, as distinguished from property affairs and municipal government, are not restricted." In 1894, the constitution of that

year established what was known as the suspensive veto. This provided that in case of special legislation for a city, the mayor had the power of veto, but it required the legislature to re-enact the measure before it became law. The home rule provisions are steps far in advance of those of 1894. They provoked a great deal of opposition.

Similar home rule provisions were enacted regarding counties. The chief was that the legislature may not enact any special legislation except at the request of the local board of supervisors.

Conservation. ARTICLE VII. The apparent purpose of this article was to preserve the forests and other natural resources of the State. It provides for a commission of nine members, similar to the state board of regents, one from each judicial district. The commissioners are to be appointed without pay for terms to expire in nine successive years; their successors to be appointed for terms of nine years each, one of whom shall reside in each judicial district. This department is to protect the forest and game preserve of the State; to aid in "preservation, prevention of pollution and regulation of the waters of the State, the protection and propagation of its fish, birds, game, shell-fish and crustacea, except migratory fish of the sea within the limits of the marine district."

Attempts have been made by commercial interests to gain control of the forests of the State. It is claimed by the chairman of the committee that drew up this article that it would have preserved the forests. A provision is made that the lands of the State constituting the forest preserve shall be forever kept as wild lands. "They shall not be leased, sold or exchanged or be taken by any corporation, public or private; nor shall the trees and timber thereon be sold, removed or destroyed." The department of conservation is empowered, however, to remove trees for purpose of reforestation.⁵

Taxation. ARTICLE X. The revised constitution guaranteed that the power of taxation shall "never be surrendered, suspended or contracted away except as to the securities of the State or a

⁵ For discussion of this article see paper by Mr. Louis Marshall, chairman of the Committee on Conservation, N.Y. *Times*, October 31, 1915.

civil division thereof. Hereafter no exemption from taxation shall be granted except by general laws and upon the affirmative vote of two-thirds of all the members elected to each house." The legislature is directed to provide for the supervision, review and equalization of assessments. Real estate assessors are to be chosen locally, but the legislature may provide for the assessment by state authorities of all the property of designated classes of public service corporations. The county is made the unit of taxation. This article, together with the sections dealing with apportionment, were to be voted on separately by the electorate. One purpose of the taxation clauses, it is claimed by supporters, was to give state control over taxation and thus prevent wealthy individuals from claiming two different residences and thus to "swear off" their taxes; another is to empower the legislature to vest in the state board of tax commissioners the assessment of the real property of public service corporations.

Suffrage. The new constitution provided for an amendment requiring a special registration not more than five months before the day of the election and the oath of such electors that they are engaged in a regular occupation which necessitates their absence from the county on the regular days of registration. Regarding woman suffrage, the legislature had agreed to submit the amendment granting woman suffrage to the voters. The constitutional convention simply made this an extra amendment to the constitution to be voted upon separately. If the clauses were not adopted, the suffrage requirements remained as they were in the constitution of 1894.

Bill of Rights—Additions. 1. A defendant charged with a crime punishable by not more than five years' imprisonment is permitted to waive indictment and jury trial. The purpose is to obviate delays in judicial procedure.

2. A person accused in any criminal case shall have the right to at least one appeal.

3. Where condemnation proceedings are instituted by a civil division of the State, compensation shall be paid for the seizure of property unless the supreme court after hearing because of public necessity shall otherwise direct.

4. Power is given to the legislature to provide for compensation for death or injury from occupational diseases.

Future Amendments. This question was discussed by Mr. William Barnes, Jr., chairman of the committee on legislative powers. He said in a speech delivered at Albany, that the constitution should prohibit any future amendments by the legislature for a period of twenty years, when a new convention should be called for such purpose. He later proposed in the convention such an amendment making the period of years ten instead of twenty. This failed.

Clauses in the constitution provided for legislative initiative of proposed amendments. They required that the proposed amendment should be printed and be upon the desks of the members in its final form for at least five calendar days before agreement thereon. It also provided for the consideration of the proposed amendment in joint session of the two houses. After such conference, the proposed amendment should be considered and acted upon by each house separately. It was hoped to arouse public interest before the passage of any amendments by the legislature. It was then to be voted upon by the people before it became a part of the constitution.

Social Legislation. The only provisions for social legislation in the new constitution were those which permitted insurance in case of injury or death due to occupational diseases; those which permitted the establishment of children's and domestic relation courts and those which said that the legislature might enact legislation regulating or prohibiting manufacturing in tenements. The committee which had charge of labor legislation refused to enact clauses in the Bill of Rights permitting old age pensions and other similar legislation. Mr. William Barnes, Jr., proposed that minimum wage legislation be constitutionally prohibited. This was voted down at the request of George W. Wickersham, the floor leader of the Republicans in the convention. The state labor leaders desired that there be included in the Bill of Rights a clause enacting substantially the decision in the Mulligan case: that no military tribunal should "exercise jurisdiction over a civilian unless engaged in military or naval service while the regu-

lar constituted state courts are open to exercise justice." This clause was reported to the convention but was stricken out on the recommendation of the chairman of military affairs by a vote of 65 to 50. Former Chief Justice Cullen of the court of appeals in a letter to the voters of the State declared that "the removal of a stick of timber is made part of the fundamental law, while the liberty of the citizen is declared to be sufficiently guarded by the order of a general . . ." He further said:—"The failure of the constitution to forbid the trial of civilians by military tribunals after the debate on the subject will be urged in every court where the question arises as proving that the people did not intend to prevent the judiciary from authorizing such trials should it see fit, and that the guarantee of jury trial must be considered subordinate to such power."

Other Amendments. Amendments were passed increasing the pay of the members of the legislature from \$1500 to \$2500 a year with railroad fare; arranging for publication of the debates of the legislature; substituting the federal census for the state census as the basis for fixing the boundaries of legislative districts; giving the legislature power to convene of its own motion for the removal of a justice of the court of appeals or of the supreme court; and allowing the assembly to convene of its own motion for impeachment. The convention refused to adopt the suggestion of Mr. Barnes that the legislature should be prohibited from passing under the police power any bill which should be considered "unreasonable;" and also the suggestions that the justices of the courts should be appointed and that the pardoning power be placed in the hands of a state board of pardons.

REASONS FOR OPPOSITION TO THE CONSTITUTION

1. *Labor Opposition.*⁶ A state conference of organized labor, held in Albany, October 4, at the call of the State Federation of Labor, unanimously agreed to oppose the revised constitution. The State Federation of Labor sent out hand-bills to its members

⁶ See pamphlet published by New York State Federation of Labor, "Reasons for Voting 'No' on the Revised Constitution."

advising them to vote against all questions to be submitted in regard to the constitution except that amendment which would permit woman suffrage. The labor unions were particularly opposed to the new constitution because at the conference of the State Federation of Labor held May 24, eight amendments were asked of the constitutional convention, and none was adopted. What the labor men particularly requested was a labor disputes act similar to the trade disputes act of Great Britain; they also asked for old age pension acts; for ample power to protect the health, labor and sanitary conditions of men, women and children working in factories; and a state fund to insure employers against the risk of workmen's compensation; and that commissioners of the labor department and the compensation commission be constitutional officers. What caused the ire of the labor leaders was the refusal of the convention to include in the Bill of Rights provisions that the writ of habeas corpus should never be suspended and that military tribunals⁷ should not exercise civil or criminal jurisdiction over citizens while the regularly constituted state courts were open to administer justice. The recent history in West Virginia, where the supreme court of that State permitted strikers to be tried by military tribunals was especially emphasized by the laboring men and by former Chief Justice Cullen of the court of appeals of New York State.

The committee of the allied boards of trade of Brooklyn drew up a brief stating their reasons for opposition to the proposed constitution. This was sent out by the Central Labor Union of Brooklyn, advising their members not to vote for the constitution. It emphasized the suspension of the writ of habeas corpus during times of rebellion and invasion; the danger of the increased power of the executive without any redress by the electorate except at the expiration of the term of the governor; the increase in salaries of judges, governor and members of the legislature; the creation of an unpaid conservation commission controlling the entire natural resources of the State. This pamphlet calls

⁷ See Brief of the Committee of the Allied Boards of Trade of Brooklyn, prepared by Cornelius M. Sheehan.

the provisions of the constitution establishing home rule for cities "the home rule gold brick," and states that "the basic evil of the present and proposed constitution is the difficulty of amending them, which seems purposely designed to prevent the adoption of progressive policies, and the one thing necessary for constitution making is the removal of the difficulties in the road of amending them." "It is a monstrous absurdity," continues the author of this brief, "in the twentieth century to have a constitution that can only be amended after two successive legislatures have given permission to submit to the people."

The Attitude of the Progressive Party and Progressive Leaders in the Two Old Parties. Mr. John J. O'Connell, New York county chairman of the Progressive party, in a debate with Ex-Secretary of War Henry L. Stimson and Frederick P. Tanner, chairman of the Republican State Committee, gave as a reason for his opposition "the concentration of power without concentration of responsibility." He attacked the budget on the ground that it was dangerous and ridiculed the idea of the governor being permitted to appoint members of the legislature to executive offices while they remained members of that body. He further declared that making "the public service commission a constitutional body, precluded obtaining home rule for the city."

Mr. George W. Perkins, national chairman of the Progressive party, sent an open letter to Mr. Root giving his reasons for opposition. This letter was inserted as an advertisement by Mr. Perkins in all the leading New York papers, and was sent broadcast throughout the State. This advertisement is said to have cost Mr. Perkins the sum of \$25,000. He attacked the short ballot; the judiciary; the power of the governor; the increase in salaries of the members of the legislature; the power to appoint members of the legislature to office; and stated that the provision in the constitution forbidding the creation of new executive departments was particularly dangerous in that it prevented the creation of a department of markets, a means by which the high cost of living could be decreased. He further declared that the article on conservation took away from the State the regulation of its marine fisheries.

A citizens' committee to oppose the proposed constitution had full page advertisements in the New York papers. This committee gave seventeen reasons for its opposition to the constitution. The membership of the committee gave weight to its opposition. It was composed of John J. Hooper, former Independence League candidate for president, and a city official of New York City as chairman; Rabbi Stephen S. Wise, of the New Synagogue; Dr. Frederic C. Howe, Immigration Commissioner to the Port of New York; John J. Murphy, Tenement House Commissioner of New York City; and Amos Pinchot, vice-chairmen.

Opposition of Tammany Hall. Tammany opposed the home rule provisions declaring that they were not wide enough and also the clause in the constitution which would prevent the representation from New York City being larger than that of the rest of the State. Tammany Hall hoped that if the proposed constitution failed it would carry the State in 1916 and so gain control of the new constitutional convention. The New York *Times* of Monday, November 1, stated that the executive committee of Tammany Hall sent out pamphlets to 151,000 registered voters advising them to vote "No" on all three questions regarding the constitution and leave the space blank in regard to the woman suffrage amendment.

Opposition of the United Real Estate Owners. Owners of real estate in New York City have an organization representing an assessed valuation of from \$300,000,000 to \$400,000,000. They opposed the following clauses: (1) permitting the publication of the debates of the legislature; (2) giving the legislature power to regulate or prohibit tenement house manufacturing; (3) the budget; (4) increasing the power of the legislature in taxation; (5) instructing the legislature that city and county debts might not be contracted for a period longer than the probable life of the work which they were to cover; and lastly the entire article permitting home rule for cities.

The Opposition of the Civil Service Forum. The Civil Service Forum is an organization composed of employees of the city government of New York, namely, policemen, firemen and others

in the civil service of the city. This organization claimed that the constitution threw the civil service into politics by placing the power of changing the charter and of reducing salaries into the hands of the board of estimate.

Opposition of the New York City School Teachers. President Churchill, of the New York board of education, advised teachers to vote against the proposed constitution on the ground that lawyers whom he had consulted disagreed regarding the powers conveyed in the home rules provision of the constitution. The question at issue was whether or not education was taken by these provisions from the control of the State and given to the city authorities. President John H. Finley, of the University of the State of New York, maintained that education was still in the control of the state education department. The teachers themselves feared that if control of education were given to the city authorities, the board of estimate of New York city would have power to reduce salaries at will.

The Opposition of the Up-State Republican Leaders. In the convention there were two distinct parties; the up-State representatives, styled by the newspapers "the reactionaries," and the more progressive element known as "the federal crowd." This distinction arose from the fact that the second group wished to increase the power of the executive at the expense of the legislative branch and to increase the power of New York City at the expense of the up-state constituency. The former group was composed of such up-state leaders as Senator Edgar T. Brackett, of Saratoga, and Senator E. R. Brown, leader of the state senate. The latter protested against the constitution because of the autocratic power vested in the governor; against budget making as an executive act; against "stripping the legislature of its powers; and depriving the senate of the right of confirmation of executive appointments; and finally against the extravagance of the creation of new and unnecessary offices. The scheme of the new constitution," he declared, "is extravagant as the mandatory expenses amounted to a fixed charge of at least \$500,000 per annum, including an increase of the governor's salary from \$10,000 to \$20,000; three additional supreme court judges in

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the city of New York, \$50,000; five county judges in the larger counties, \$50,000; 21 senators and assemblymen, \$201,000; increase in printing senate and assembly debates, \$50,000; railroad fares of legislators, \$10,000; three additional judges of the court of appeals, \$41,000.

In the convention Senator Edgar T. Brackett was the leader of the party who wished to keep things as far as possible as they were. He opposed granting any home rule to the city of New York, and was in favor of decreasing the power of the executive. He said in the convention: "I have been an active politician for many years, and I have closely observed the way things are done by the so-called machine. But let me tell you that more invisible influences have been at work for this proposition than have ever been exerted in the legislative and political history of this State in fifteen years. I believe the question whether we shall continue to be a democracy is involved in this discussion."

These expressions from the up-state leaders is indicative of the feeling of the old-time legislators that any increase in the power of the executive smacks of monarchy, and any increased power granted to municipal government is a blow at representative government.

As an example of the more radical opposition to the constitution, let me quote the statement of Rabbi Stephen S. Wise, of New York City, in his speech delivered in Cooper Union:

"I protest against this stealing of the commonwealth. It is infinitely more important than the stealing of a little money from the state treasury. It must be prevented, just as the theft would be. The new constitution is absolutely undemocratic. Mr. Root privately and personally conducted the convention that framed it. It is not only undemocratic, but anti-democratic. Mr. Root does not know what democracy is. If he does, he is afraid of it. . . . Why has the cause of good government made such slow and halting progress during the last generation in American cities? Because the people rightly distrust the men who presume to stand in the foreground for the so-called battle for good government. After these men have fattened on

franchises and monopolized public privileges, they presume to urge the public that their lesser affairs be economically administered. The framers of the constitution do not in the first and last place represent the public interest."

The adherents of the constitution, similar to the opponents, stormed the State with pamphlets. The committee for the adoption of the constitution, with Robert S. Binkerd, secretary of the New York City Club, as secretary, sent out pamphlets answering those of the opponents to the constitution. Some of these are entitled, "The Truth about the Conservation Article," "To Democratic Voters of the State of New York," "Saving the State's Money," "Responsible Government, Four Speeches on the Proposed Constitution by Elihu Root," "Labor and the Proposed Constitution," "To Friends of Education, Why the Constitution Should Be Accepted." Some of the members of the committee belonging to this organization were former ambassadors: Joseph H. Choate; Andrew D. White, and David J. Hill; John G. Milburn; George Eastman; Frank A. Munsey; Nicholas Murray Butler; and former chief justice of the court of appeals, Charles Andrews.

A summary of their conclusions in favor of the constitution are, that it will:

1. Go far toward the abolition of invisible government.
2. Restore order and simplicity to the administrative organization of the State.
3. Produce great economies in the cost of government.
4. Secure speedier and less expensive justice in private lawsuits.
5. Grant enlarged powers of local self-government to cities and counties.
6. Improve the legislature and legislation.

It also had large half-page advertisements in the New York papers, advising the people to vote in favor of the constitution. The New York *Evening Journal* had an editorial, entitled "Who Spent a Quarter of a Million Dollars on this Little Collection of Circulars? What Generous-hearted, Whole-souled Gentlemen Supplied so Much Money to Enlighten the Public?" The atti-

tude of the *Journal* and the New York *World* undoubtedly influenced a large number of the unthinking to vote against the constitution. The organization for the adoption of the constitution claimed that \$150,000 had been spent by their opponents in advertising, while they had spent only \$30,000 themselves.

To give in brief the reasons for the failure of the constitution to be adopted:

The constitution failed of passage because of its radical changes in government; it was not conservative enough for the old-time believer in the theory of the separation of the powers; nor radical enough to suit the laboring men and the progressives. They say that "politics makes strange bed fellows," and more than once in the history of politics may be seen the alignment on one side of the ultra-conservatives and the ultra-radicals; the reactionary reputations of many of the leaders of the convention militated against its acceptance by many who were progressively inclined, in spite of its many good features; the feeling of Tammany Hall that they might carry the State in 1916 and so obtain control of a new constitutional convention; the opposition by the city employees of New York City and the natural opposition of the New York State farmers in that it increased greatly the salaries of many of the state officials; the fact that it had to be voted upon as a whole rather than by piece-meal as in the recent Ohio constitution.

In conclusion: The constitution is indicative of the tendency in recent constitution making: (1) of the disappearance of the distinction between statutes and constitutional amendments; (2) of the increasing power of the executive over that of the legislature; (3) of the establishing of a budget system; (4) of the increased power given to cities of controlling their own government. It is more conservative than some recent constitutions, as it does not change greatly the method of amendment, and does not give any power to the people of initiating legislation. Although the constitution as adopted by the convention failed, the expense it involved was worth while because of its educational influence upon the people of the State and because the new constitutional convention may, if its delegates are wise enough, learn from the mistakes of the recent convention.

In closing, let me quote the words of Prof. Charles A. Beard, of Columbia University, a progressive political scientist: These were written shortly before the vote upon the constitution. "It would be a work of supererogation to discuss the merits of this constitution. Its provisions speak for themselves. The advocates of the short ballot and of administrative re-organization have received a large measure of consolation—more in fact than they had reason to expect. The champions of scientific budget making have achieved a substantial gain in the governor's initiation of the administrative budget whether it becomes a matter of form will depend on the character of the new governors. In breaking down the rigid separation of the governor and his cabinet from the legislature and admitting them to the floor of the house—a system of interpellation may be established which will contribute powerfully to efficient and responsible government and will open up undreamt possibilities in politics. There is plenty to be said in criticism, but another time would be more appropriate, although one can not forbear mentioning the continuation of the gerrymandering of New York City."

LANGUAGE AND THE SENTIMENT OF NATIONALITY

CARL DARLING BUCK

University of Chicago

The nineteenth century, it is a commonplace to remark, witnessed a notable revival of nationalistic sentiment, the germs of which go back to the eighteenth, and the political consequences of which are in considerable part still outstanding. The emancipation of the Balkan States, the union of Italy, and the consolidation of Germany, were substantial, though incomplete, realizations of nationalism. The Germanization of Austria-Hungary, which had seemed inevitable, was brought to a halt by the national revival of Slav and Magyar. And today, not to mention the Irish situation, Eastern Europe is fairly alive with smaller nationalities seeking to gain or to maintain autonomous development. Nationalism, in spite of, or rather because of its being so largely a matter of sentiment, is the most active force in European politics. The dynastic system, certainly, is only a superficial relic of a past reality; loyalty to a dynasty, except as it is identified with nationalism, has lost its former significance. And on the other hand, a socialistic brotherhood which shall rise superior to the bounds of nationality is a dream of the future.

Some writers, it is true, believe that the force of nationalism is exaggerated, that the dominant issues now are, some say economic, others those of democracy. No doubt in some of the more recent national movements democratic and nationalistic aspirations are combined, but the latter are more intense and have by far the stronger popular hold. The economic issues too are also nationalistic. When it is affirmed that the present war is in the last analysis a conflict over trade expansion, it cannot be meant for example that what the Germans want, and feel themselves thwarted in, is merely expansion of their trade, more opportunities for individual Germans, but rather that they

desire spheres where they may develop trade as Germans, where they may maintain and extend their German nationality, instead of submerging it in that of others. Prof. Hans Delbrück emphasizes that "colonial policy must be dictated not merely by commercial but rather by national interests," and adds "The first proviso for a colony which aspires to be an assistance to Germany is the absolute supremacy of the German language."¹ No estimate of ultimate causes can eliminate the element of national jealousy, and as for the immediate occasion of the war, that is most obviously of nationalistic character, the conflict between Austria and Serbia growing out of the Pan-Serbian agitation.

Contrary to a popular impression that nationality is something fixed and capable of exact definition, it has come to be recognized that it is rather a product of historical development, and that all attempts to formulate a series of universally applicable prerequisites break down. Nationality is essentially subjective, an active sentiment of unity, within a fairly extensive group, a sentiment based upon real but diverse factors, political, geographical, physical, and social, any or all of which may be present in this or that case, but no one of which must be present in all cases.²

¹ *The Atlantic Monthly*, April, 1915, p. 528.

² Cf. especially Eduard Meyer, *Zur Theorie und Methodik der Geschichte*, pp. 37 ff., who remarks justly that the different factors contributing to the sentiment of nationality must be investigated for each nationality separately. Yet there is no impropriety in isolating, for purposes of observation, and surveying the rôle of one particular factor,—such as language, the obvious relation of which to national sentiment has not of course been overlooked by writers on nationality, but the relative importance of which is variously estimated. This is what is attempted in the following—not exhaustively, for this would mean a review of all linguistic and political history, but by means of illustrations selected from ancient and modern times. We are not concerned with any doctrinaire thesis of the ideal relationship between language and nationality,—nor, again, with the problem whether what seems to many the economic folly of preserving minor languages from extinction is not more than offset by the sometimes extraordinary impulse to educational progress which attends a linguistic-national revival. We are concerned here only with the question of what the relationship between language and national sentiment has been as a matter of historical fact.

The most casual observer recognizes that nationality and the state are not synonymous, though they often coincide, and "nation" is now used most commonly in a political sense. It is to avoid this political connotation of "nation," or at least its ambiguity, that "nationality" has come to be preferred to "nation" in its broader sense. Political union is the natural consummation of nationality; and conversely, such union may in time create a genuine nationality out of heterogeneous elements, as in Switzerland. But, as we well know, nationality often exists without corresponding political expression. With the partition of Poland, the Poles did not cease to be a nationality. The Austro-Hungarian empire comprises not one nationality or two, but ten. The ancient Greeks in the period of their highest development were a nationality, but not a nation in the political sense, likewise the Germans in the time of Goethe.

The notion of physical kinship, inherent in the word "nation" by derivation, and fitting the romantic idea of the evolution of family to nation, is perhaps the most conspicuous element in the popular conception of nationality, and at the same time the least real factor. We speak of the "German race" or the "Latin races," to the distress of the anthropologist, who feels that the use of the word "race" in any such connection is an absurdity. For there are no pure races, in a physical sense, in Europe, and real racial distinctions of skull, stature, hair, complexion, etc., so far as they are still traceable with any definiteness, cut right across the existing nationalities. They reflect a grouping so remote in the past as to be of wholly subordinate interest for the historical period. In short, the "races of Europe" in the language of the anthropologist have nothing to do with the "race of Europe" in the popular sense, where "race" is merely a convenient equivalent of "people" or "nationality."

But supposing that we ignore the remote racial classifications, and understand kinship in a more limited sense, as common descent within a given historical period. Beyond question the belief in such kinship is generally an important element in national consciousness. Yet we have only to think of the extent of invasion and colonization to which nearly every corner

of Europe has been subject, to realize that this belief can only be approximately true. And, what is more significant, no matter how nearly true it may be, it is not demonstrable. Recorded descent is at best restricted to a few families. It is the linguistic descent which is really demonstrable, and which is instinctively felt as evidence of national descent.³

Sociologists speak of a certain "likemindedness" as the fundamental characteristic of nationality. No doubt, especially in the more fully developed nationalities, there is something which goes deeper than all external criteria, and a true understanding of this something is the highest goal,—but also the most difficult. Its definition is so delicate a matter that there is danger of its proving illusory even in the hands of scholars, and it is scarcely a substantial reality in the common man's consciousness of nationality. That which is tangible and observable, and also the basis of "likemindedness," is community in definite customs and institutions; and of these the most important are religion and language.

A common form of religion was a conspicuous element of national consciousness in the ancient world, where religions were distinctly national. In eastern Europe there is still a close relationship between church and nationality, and the church has

³ And not improperly, if we understand by this the physical descent of, at the very least, a considerable portion of a nation, and especially its social descent. In the reaction against the careless confusion of language and race, there is now perhaps less danger of overestimating than of underestimating the historical bearing of linguistic evidence. For it is still a truism that language implies a people speaking it. It does not pass from one people to another without human agency. In the majority of cases of racial mixture it is the language of the numerically superior element which survives, so that here linguistic descent reflects also the physical descent of the majority. The mere physical domination of a small body of invaders, forming only the ruling class, is not sufficient to impose their language upon the masses. Witness the fate of the Franks or the Normans in France, the Swedish founders of the Russian state, the Asiatic Bulgars, the Manchus in China. In those cases where a minority has imposed its language upon the majority, as for example the Romans in Gaul, this is all the more evidence of the dominance of this minority in social organization. The linguistic descent then reflects a degree of physical descent by no means inconsiderable, but especially what it is fair to call the main line of social descent.

been a powerful agency in maintaining language and nationality.⁴ But it needs no demonstration that in modern Europe distinctions of religion and nationality are not to be identified. Everywhere the lines intersect. Even among Asiatic peoples, where the religious factor has so largely overshadowed ethnic distinctions, a change is observable in the direction of a keener sense of nationality on the linguistic basis, as for example among the Crimean Tartars, or in the new Turkish nationalism.

If we turn now to language, as the factor which is to engage our especial attention, it is, of course obvious enough that this also is no universal criterion. The inhabitants of Switzerland do not regard themselves as Germans, Frenchmen and Italians (to ignore here the small "Romansch" element), but as Swiss. Centuries of a common history have created a sentiment of common nationality, in spite of the difference in speech. We are not merely a different nation politically, but are sensible of being a distinct nationality from the English, in spite of community of language. And in general the nationalities of the Western Hemisphere have developed upon a geographical and political basis. Again, the Irish nationality is obviously not restricted to the small fraction which still speaks Irish. At the same time the effort of the Gaelic League to revive interest in the Irish tongue is a notable phase of the national revival. It was an Irishman who once said with feeling: "A people without a language of its own is only half a nation. A nation should guard its language more than its territories, 'tis a surer barrier,

⁴ The Turkish identification of religion and nationality and the centuries-long grouping of all the Christian subjects in one "millet" enabled the Greeks, who were in complete control of church and education, as well as of commerce, not only to maintain but even to extend their language and nationality. The well-to-do Bulgarians and Wallachians spoke Greek and called themselves Greek, and in many cases this meant a permanent accession to Greek nationality. The movement was halted by the nineteenth century revivals of the other Balkan peoples, notably the Bulgarian, which was directed first and foremost against the Greek domination of the church. Although the Greeks are still inclined to claim what they call the "Bulgarian-speaking Greeks," namely those who adhere to the Greek patriarch instead of the Bulgarian exarch, this is hopelessly untenable. And, indeed, the undisputed claims of Greek nationality on the linguistic basis offer a goal sufficiently advanced for the most ambitious politician.

a more important frontier than mountain or river." On the other hand, Professor Mahaffy, who has as little sympathy with the language movement as with Home Rule, remarks: "It seems to be a profound mistake that distinct nationality can only be sustained by distinct language."

In a strict sense this is of course true. But the "profound mistake" is rooted in the observation of what is the general rule rather than of what is the exception. It is the other situation, the intimate relation between language and nationality, which in Europe certainly dominates alike the naïve attitude of the common man and the deliberate policy of statesmen. The belief that loss of language means loss of nationality is instinctive and also supported by countless examples in history.

For of all the institutions which mark a common nationality, language is the one of which a people is most conscious and to which it is most fanatically attached. It is the one conspicuous banner of nationality, to be defended against encroachment, as it is the first object of attack on the part of a power aiming to crush out a distinction of nationality among its subject peoples. Furthermore, it is matter of record that several of the nineteenth century revivals had their beginnings in the field of language and literature, beginnings which were safe and unobtrusive, but most effective in awakening national consciousness. Even the dry-as-dust philologist, all innocent of political interest, has in more than one instance definitely contributed to this end. Up to the most recent times questions of language rights have held the first place in national propaganda, and have been the occasion of political upheaval, riot, and revolution. With few exceptions the European nationalities are essentially language groups; and especially for those in eastern Europe, which can not be defined in political or geographical terms, language is the admitted criterion of nationality, the only one available for statistical purposes.

The familiar modern policy of denationalizing a subject people by imposing the language of the dominant nationality, or, expressed less offensively, of unifying heterogeneous elements of the state by encouraging unity of speech, has ample precedent.

The Assyrian king Sargon boasts of having carried into captivity peoples speaking strange languages and varied dialects, and *made them of one speech*. An example which strikes one as equally remote in the past, though far from it in actual date, is, curiously enough, from the Western World. From a Spanish-Inca writer we learn that the Incas imposed their language upon all the subject tribes of their empire. Teachers were provided in all the towns, and it was understood that no one could attain any considerable office who was not acquainted with the state language.

The political expansion of Rome carried with it, step by step, the spread of its language. When the Greek language had reached its greatest expansion, Latin was still confined to a few square miles. Within a few centuries it had become a world language. No administrative career was open to one ignorant of Latin, nor even, in theory at least, the prize of Roman citizenship. While there is no evidence of the systematic application of a linguistic test, and indeed this was obviously impracticable when citizenship was granted wholesale to towns and provinces, we are told, for example, that the emperor Claudius deprived a Lycian of Roman citizenship because of his annoying inability to understand Latin. Wherever Roman domination was complete and long continued, the intensiveness of its organization inevitably resulted in the general adoption of Latin and the extinction of the native languages. Hence the present "Latin nations" or "Latin races," terms which on their face illustrate the popular recognition of the relation between language and nationality.

Exception must be made of the Greek East, where the maintenance of the Greek language, and thereby of Greek nationality, was never seriously imperilled by Roman rule. A language which educated Romans were accustomed to look up to as a superior vehicle of literature and education, which Cicero, for example, speaks of as read among "almost all peoples" in contrast to Latin confined to "its own rather narrow boundaries," could not be put on the same plane as the uncultivated languages of Western Europe. The use of Latin in Greece was never more

than a thin official veneer, and even officially Greek was not deprived of all standing. Public regulations were published in parallel Latin and Greek versions. Towns often addressed communications to Rome in Greek. Greeks were at times even allowed to address the Roman senate in Greek. It is all the more interesting to note the disposition of Roman officialdom to insist on the prestige of Latin. The practice of permitting Greek in the Roman senate was frowned upon and on occasion definitely prohibited. Cicero was blamed for having addressed the Syracusan assembly in Greek. High Roman officials in Greece, however well able to speak Greek, made a point of pronouncing their formal addresses in Latin, which was then rendered into Greek by an interpreter. To cite only one of several instances on record, Aemilius Paulus after the battle of Pydna spoke privately to the defeated Perseus in Greek, but at the assembly of Amphipolis he made his formal proclamation to the Macedonians in Latin, which was then repeated in Greek by the praetor.

No other European nationality has so long a recorded history as the Greek, and nowhere is the connection with the development of nationality and with its maintenance more apparent. While the Roman nationality developed at a definite center, as did the language, and was from the outset centralized and above all politically effective, the ancient Greek nationality was a slowly maturing sentiment of community, which did not affect the political union of the Greeks, and only rarely, and then partially, united them against a common foe. On one of these occasions, the beginning of the Persian war, the Athenians assure the Spartan envoys that they will not be faithless, to the Greek people, which is "of the same blood and of the same tongue," nor to their common shrines and like religious customs. The belief that they were of the same blood, however near the truth it might be, could not of course be founded on any record or genuine tradition, but was evolved, and incorporated in legend, out of the general consciousness of community. The tangible, observable factors which created this consciousness were speech and customs, and of these the community in speech was the most definite

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and striking."⁵ The identification of Greek language and nationality is transparent in Plato's lament that "all Sicily would soon be almost devoid of the Greek tongue, converted into some Phoenician or Oscan power, a result which all Greeks should earnestly oppose. The persistence of the language has been the vital factor in the maintenance of Greek nationality through all political vicissitudes down to the present day. Roman domination, the latter settlements of Slavs and Albanians on Greek soil, and the centuries of Turkish rule, only emphasized the resisting and absorbing power of the Greek language.

The relation of language to the revival of nationality, or again to its loss, is well illustrated by the history of the Slavic peoples, all but one of which have at some period been in danger of denationalization, and some completely absorbed. Or let us say rather the Balto-Slavic peoples, for the Lithuanians and the Letts, although loosely referred to as Slavs, are not Slavic, but only nearest akin to the Slavs. The Lithuanians and the Lettic languages, with the extinct Old Prussian, form the Baltic subdivision of what philologists call the Balto-Slavic branch of the Indo-European family.

The never ending conflict between Slav and German has been going on since the time of Charles the Great. For Slavic tribes had occupied the old Germanic land as far west as the Elbe and beyond, so that a line drawn from the mouth of the Elbe to the head of the Adriatic would mark roughly the line between Ger-

⁵ It is to be noted that the Greek language in contrast to Latin was as slow to attain that degree of uniformity which we expect in a "national language," as was Greek nationality to effect political unity. The particularistic tendency manifested in the system of rival city-states had its counterpart in the linguistic situation. Until a late period there was no Greek language in the sense of a single standard language used throughout Greece, but rather numerous local dialects, each paramount in both spoken and written form within its own domain. These dialects, however, had sufficient resemblance to be in the main mutually intelligible; and furthermore, while no one dialect prevailed exclusively even in literature, the works of the Greek poets, whether in Aeolic, Ionic, Attic or Doric guise, were familiar to all Greece. So, in spite of the long continued diversity in dialect, the Greeks could not fail to realize that they were of one tongue, that all others were "barbarians." And eventually the dialect of Athens became, first the recognized language of prose literature, and, later in a modified form, the common language of the Greek world.

man and Slav. All the vast region including Berlin, Leipzig, Dresden, etc., was for centuries Slavic, as hundreds of the local names still show. This was reoccupied by German colonists, and the unorganized and uncivilized Slavic tribes, as they were converted to Christianity, were also Germanized. A detached branch northeast of Hanover retained their speech till the beginning of the eighteenth century. Now there remain only the Lusatian Wends or Sorbians, a little Slavic oasis, northeast of Dresden. While loyal Germans in political sentiment, they still retain their Slavic speech (beside German, for they are bilingual), but in diminishing numbers, and it is only a question of time when it will be as dead as Cornish, and with it every trace of distinct nationality have disappeared as completely as was long since the case with the Slavs further west and north.

Like the northern Slavs, so also the Baltic Prussians of the Königsberg region, whose language, preserved in sixteenth century catechisms, is of extraordinary interest to the philologist, were completely Germanized by the seventeenth century. Yet their name lived on to vastly greater fame. For Prussia in its original sense, the present province of East Prussia, whence the first "King of Prussia," crowned at Königsberg, derived his title, has its name, of course, from these Baltic Prussians, next akin to the Lithuanians and Letts. It is this transfer of the name, coupled with the fact that so much of present Prussia was once Slavic territory, that is the excuse for one of the many misleading statements elicited by the present war, namely that the Prussians are really Slavs.

The barrier to the further eastward progress of Germanization was the consolidation of the Poles. Here too Germanization was threatened, especially in the thirteenth century, when immense numbers of German colonists poured in. But by this time the Polish state, which had its beginning in the tenth century, was fairly strong, and a native Polish clergy worked actively for maintenance of the Polish language. The church authorities definitely ordered that the people should be taught the *pater noster* in Polish, and that in the schools there should be only teachers who were acquainted with Polish. Later, after Poland

became a great power, all danger of Germanization was past. The consciousness of nationality and pride in the national language and literature became so strong that no subsequent political events could efface it.

Since the decease of Poland as a political entity, the language has been the one ineradicable mark of nationality; and this has been recognized alike by the Poles themselves and by the governments that have sought to assimilate them. The attempt of Germany to Germanize its Poles by the help of repressive measures against their language has been a conspicuous failure. Instead of the Poles becoming German speaking, the German colonists in large numbers have become Polish-speaking. The Russian policy toward the Polish language, varying in severity but always repressive, has only made the Poles more obstinately attached to it.

Austria long since gave up trying to denationalize its Poles, and won their support by giving them free hand to resume their ancient dominance over the Ruthenian population of Eastern Galicia. For since 1869 Polish has been the recognized official language of all Galicia. The University of Lemberg remains wholly Polish, while the Ruthenians are clamoring for a Ruthenian University in which their own language, a form of Little Russian, shall be recognized. And in spite of violent Polish opposition this has been seriously considered by Austria, as a means of strengthening the sentiment of a Ruthenian nationality as distinct from Russian, and offsetting Russian propaganda in Galicia. For the official Russian policy toward the "Ukrainian" movement is not to recognize the Ruthenians, or their own Little Russians, as a distinct nationality with a distinct language, but to stamp them plain Russians.⁶

Now that Polish autonomy is being freely promised by both sides in the present conflict, it is well to realize that this is something very different from a restoration of the old Poland at the height of its power. For this was only partly of Polish nationality, the larger portion being Russian or Lithuanian.

⁶ See p. 56.

The world has almost forgotten the existence of a Lithuanian people, and that they ever played a rôle in history. They are now scarcely two millions in number, a small fraction in the extreme northeast of Prussia (the region including Memel, Tilsit and Gumbinnen), where they have been under German Protestant influence since the time of the German Order, the rest in that part of Russia which lies to the east of this and south of Courland, which is Lettic. This, only extended further south, has been their home since they are first heard of in the eleventh century in conflict with the Russians. In the thirteenth and fourteenth centuries a succession of able Lithuanian princes conquered an immense stretch of Russian territory, south far beyond Kiev and east almost to Moskow, and at the same time withstood the might of the German Order. Thus was established what is known in history as the Grand Duchy of Lithuania or simply Lithuania, which once reached from the Baltic to the Black Sea. By the marriage in 1386 of the queen of Poland with the Lithuanian Grand Duke Yagello, who was crowned king of Poland, a dynastic union was effected. For some two centuries Lithuania continued to be governed directly by native princes, who strove to resist its subordination to Polish interests. But with the more effective union of Lublin in 1569 Lithuania virtually disappeared from history. Despite some later abortive separatist efforts, in which the famous Radziwill family was prominent, it remained an integral part of Poland, until by the partition it came into the hands of Russia.

Of this Lithuania of history only a relatively small portion, in the north, was really Lithuanian in speech. The rest was White Russian and Little Russian. The official language employed by the Lithuanian rulers was a form of Russian, and in later times Polish became the language of administration and of education. Lithuanian was never the state language, was not taught in the schools, and received no literary cultivation. It was merely the language of the peasant class in the north, and likewise in Prussian Lithuania, and the little that was written there in Lithuanian before the eighteenth century was exclusively of religious character, Bible translations and tracts for the instruction of the peasantry.

Nevertheless the language, however obscure its status, did survive, and it is this alone which prevented the total obliteration of Lithuanian nationality. Without it the Lithuanians would have long since forgotten that they were anything but Poles, Russians, or Germans. It was in Prussian Lithuania that the language first attracted the notice of the outside world. Lithuanian folk-poems were collected and translated into German, arousing the lively interest of Schiller and Goethe. But, curious as it may seem, it was the new science of comparative philology, from the early nineteenth century on, which brought most fame to the Lithuanian language. It was seen that this language was remarkable for its preservation of early forms, and it came to be regarded as a sort of Sanskrit of the West. Eminent philologists engaged in the collection and publication of the folk-literature, in making grammars and dictionaries, in editing the "Old Lithuanian" religious texts, in the minute study of local dialects, and in the scientific exposition of the history of the language. It might seem that the purely scientific interest of a small band of scholars could have no influence on the fate of a language or people. But in this case, and it is not the only one, it certainly did, by reason of the reaction on native sentiment. If the Lithuanians are reminded, as they often are by the Poles, that their language can boast no great literature, they retort that it is one of the most highly prized by scholars and is studied in the greatest universities of Europe. Even the uneducated are aware of this interest in their language, although they may be puzzled to know what it is all about.

In Prussia the fosterings of Lithuanian sentiment has never awakened governmental apprehension of political consequences and it has been left undisturbed. In Russia where is the main body of Lithuanians and where in recent times the national revival has been most pronounced, this was viewed with suspicion. Until 1904 the printing of Lithuanian books, except in Russian characters, was forbidden. Meantime large numbers of the Russian Lithuanians had emigrated to America, and found here a free outlet for their national expression and for publication. Besides their many newspapers, Lithuanian books of all

descriptions have been published here, in fact more Lithuanian was being printed here than in Europe, until the withdrawal of the Russian restriction in 1904.

Whether this action of Russia was due to a more liberal policy or with the intent of playing off the Lithuanian against the Polish movement need not concern us. There is no doubt that the two are antagonistic. The Poles wish to convince the Lithuanians that, owing to their long connection with Polish history and their debt to Polish civilization, they are virtually Poles and should be a part of the Polish movement, that their insistence on distinct nationality is only a futile "Lithuomania." The majority of Lithuanians, on the other hand, feel that they have given much to Poland in the past and received little but contemptuous patronage, and they will not be exploited further. Incorporation in an autonomous Poland is the last thing they desire. What they hope for is autonomy for themselves, or possibly with the Letts, who are nearest akin and occupy the contiguous territory to the north.

The Letts, owing their civilization to the German colonists, who began to settle at the mouth of the Duna as early as the twelfth century, were pretty thoroughly Germanized in the towns, the Lettic language being merely a peasant vernacular. But in the nineteenth century it came to be cultivated in literature and as a medium of education, and with this movement the sense of nationality grew strong. The revival of the language, being at the expense of German, was warmly favored by Russia. After it had done its work and reduced the use of German to a minimum, Russia's attitude cooled. Precisely the same considerations, it may be remarked in passing, account for Russia's alternate encouragement and discouragement of the Esthonian movement in the Dorpat region, and also of the Finnish movement, only that here it was the Swedish influence and the extensive use of Swedish by the Finns that Russia was glad to see checked by the revival of Finnish language and national sentiment.

Bohemia has been the historic center of the Slav-German struggle. It was all but Germanized, yet became the nursery of

Pan-Slavism. Bohemia and Moravia were in the eleventh century permanently united in the kingdom of Bohemia, at first in only loose dependence on the German empire, but subject to rapidly increasing Germanization. When Bohemia was at the height of its prestige under the emperor Charles IV, with Prague the imperial capital, it was virtually a German state. The Hussite movement in the fifteenth century was not merely a religious protest, but a national upheaval against Germanization, and was accompanied by intensive cultivation of the native language. This was the "golden age of Bohemian literature." But after the Catholic reaction and complete collapse of Bohemian nationality in the battle of the White Mountains in 1620, the language was regarded as an instrument of Hussitism, and all books in Bohemian, regardless of contents, were burned. Jesuit priests with escorts of soldiers searched even the homes of peasants, and one is said to have boasted that he had burned 60,000 Bohemian books. The language sank to the position of a peasant vernacular.

Towards the close of the eighteenth century began a revival of interest in the Bohemian language, which gained strength in the first half of the nineteenth century and inaugurated a general national revival. And it is well recognized that the seed was planted by a philologist, Dobrovsky (1752-1829), who devoted himself to the study of the Bohemian language and literature and to more general Slavic topics, and is known as the "father of Slavic philology." His interest was purely that of a scholar. So far from being a propagandist, he had neither faith in nor sympathy with the hope of restoring the language to literary use, and himself wrote in German. Nevertheless his scientific devotion to the language, the prestige which he won, and the interest in Slavic studies which he awakened, was a most important factor in the practical revival of the language at the hands of others who were enthusiastic propagandists, men like Kollar, whose collection of sonnets entitled "The Daughter of Slava," in glorification of an idealized Slavism, aroused unbounded enthusiasm, and above all Palacký, who was equally eminent as historian and politician. When invited to go as a delegate to the Ger-

man National Assembly at Frankfurt in 1848, Palacký made his celebrated reply, "I am not a German, but a Bohemian of Slav race."

What had been a purely literary revival was by this time a vigorous and widespread national movement. Henceforth the Bohemians were to be a thorn in the flesh of the Austrian government, and Austrian ministers have risen and fallen on the issue of language laws designed to satisfy the demands of the Bohemians. And if the latter are still far from satisfied with their constitutional status, the restoration of their nationality and language is an accomplished fact. The native language is dominant in education and literature, in the press and the theatre. It is the German element which is now on the defensive. The University of Prague has been since 1882 divided into a German and a Bohemian University, the latter with several times as many students as the former. Where not so many decades ago little Bohemian was heard in the streets of Prague (in the early part of the nineteenth century one of the literary group reported in great excitement to his friends that he had heard two well-dressed men speaking Bohemian), it is now almost dangerous to speak German. The old street-name signs have been replaced by Bohemian, just as in Laibach they have been replaced by Slovenian, these signs always being a conspicuous barometer of the linguistic situation.

The Slovaks of northern Hungary are closely akin to the Bohemians. They are simply the eastern extension of the population of Bohemia and Moravia, from which they have been cut off since their incorporation in Hungary in the eleventh century. Were it not for their long political separation, they would undoubtedly, like the Moravians, form a part of Bohemian nationality in the wider sense, using the same written language. As it is, the Bohemians think that is their true position, and speak of Slovak as a Bohemian dialect. Some of the most prominent propagandists of Bohemian language and nationality, like the poet Kollar, were of Slovak birth. They thought it the only natural and sane procedure for the Slovaks to use as their literary and standard language the existing Bohemian, from which

the Slovak dialects differed only in greater degree than the various spoken dialects of Bohemia and Moravia, and as the spoken dialects in every country differ more or less from the standard language. Had Bohemian nationality and language then enjoyed their present established position, instead of being in the first stage of revival, this view might have prevailed. And if by any future turn of events the Slovak country should be detached from Hungary and united with Bohemia, it is still possible that the Slovaks might gradually adopt Bohemian and be eventually merged in a wider Bohemian nationality,—that is, another proviso, if the Bohemians should have the rare wisdom not to force the issue. But as a matter of fact the movement, which originated with the Catholic clergy, to establish a distinct literary language on the basis of the Slovak dialects, carried the day. The Slovaks regard themselves as distinct from the Bohemians in nationality and language, and it is their own subjective view which must be, and is, accepted by the world as representing the actual present situation.⁷

⁷ This is one illustration of a fact which, while not in conflict with the general thesis of the important relation between language and nationality, we do not wish to be accused of slighting,—namely that the linguistic situation itself is not something absolutely fixed, wholly immune from manipulation or independent of external factors. For example, it is owing to the political history of the Netherlands that Dutch is a distinct language, while the similar Low German of Northern Germany is only a dialect of German,—that is, according to the conventional use of “language” and “dialect.” For these terms are incapable of rigid definition by purely linguistic criteria. The German “dialects” of Westphalia and Bavaria differ from each other much more than do the Danish and Swedish “languages,” or Servian and Bulgarian. The popular recognition of a language as such applies primarily to a standard or literary language and the evolution of such is the result of a centralizing process, the manner and extent of which is determined by historical factors. Thus the High German of Luther’s bible translation, itself based upon what had already become established as the official language of the Saxon and imperial courts, was finally adopted by the Low German speaking population of North Germany, but never in the Netherlands, though, from the purely linguistic point of view, its use there would not have been materially more difficult or artificial. Another literary language, based upon the native Low German speech had grown up here, and, owing to the political independence, had gained the status of a national language, with all its powers of resistance. The dominance of the speech of Paris marched with the political consolidation of France, and just as the South was not permanently united with the North till after the final extinction of the English claims, so it long remained outside of

The struggle of the Slovaks has been to escape Magyarization. In the nearly nine hundred years that they have been an integral part of Hungary only their language has kept them distinct, and to this they became more consciously attached with the general revival of national sentiment in the nineteenth century and the Magyarizing policy of Hungary.

The Hungarians or Magyars, it will be recalled, are not the linguistic centralization. An ordinance of 1539 requiring the use of French in all the courts brought a formal protest from the Province against being forced to use a language which must be learned like Latin. Had the South of France remained permanently detached from the North, Provençal would have the same status as a language with French. Had the absorption by Castile of the other kingdoms constituting Spain extended to that of Portugal, its standard language would be the same Spanish, based on the dialect of Castile. There would be Portuguese dialects coördinate with Spanish dialects, but no Portuguese language in the conventional sense. But since, owing to the course of history, Portuguese did gain the status of a national language and has maintained it for centuries, its position is of course established beyond the liability to reversal, and the relation to national sentiment the same as elsewhere. Such questions as to "language" or "dialect," one nationality or two, have long since been settled in most of Europe, despite sporadic movements like the Provençal or Catalan revivals. But we must recall the historical basis of their settlement, when we face such questions as whether Slovak is a distinct language or only a dialect of Bohemian, whether Ruthenian, or more broadly, Little Russian is a distinct language or only a dialect of Russian, whether the Slavic speech in Macedonia is Bulgarian, or Serbian, or just "Macedonian Slav." For it is folly to imagine that it is only necessary to apply to the philological expert for a categorical answer. The philologist knows that Little Russian is more closely allied to Great Russian (the standard Russian language) than to any other of the Slavic tongues, and at the same time, differs from it much more than the various Great Russian dialects among themselves. But he cannot determine whether, in the course of historical events, its final relation to Russian will be parallel to that of Low German of North Germany to German, or to that of Dutch to German. The philologist knows that the Slavic speech of Macedonia has many points in common with Bulgarian, others in common with Serbian, and he may chart these in intricate "isoglossal" lines. But Serbian and Bulgarian philologists will continue to differ in the interpretation of the same facts; and if the unprejudiced conclusion is that the relation to Bulgarian is the closer, such a scientific dictum is of far less consequence than the prevailing Macedonian sentiment mainly the result of Bulgarian propaganda through their school system in favor of Bulgarian language and nationality. An extended period of either Serbian or Bulgarian control of the schools would secure the dominance of either Serbian or Bulgarian, but the latter with less resistance.

For illustration of an exceptionally conscious design in the creation of a standard language, note what is said about Croatian, p. 63.

Slavic or even Indo-European, but a people of Asiatic origin, whose language belongs to a well defined family of which Finnish is the other most important representative. This is one of the cases where language has been more persistent than race, for in physical type the Hungarians are no longer distinctively Asiatic. Hungary in the fifteenth century was one of the strongest European states, the chief bulwark against the Turkish invasions. But the defeat by the Turks in the fatal battle of Mohacs in 1526, and the later dependence upon Austria, brought Hungarian nationality to such a low ebb that at the end of the eighteenth century it seemed marked for extinction. It was a linguistic crisis which provoked a reaction and inaugurated a national revival, marked by a rapid change in language sentiment from indifference to positive fanaticism.

The order of the emperor Joseph II (1780-90) that German should be the official language throughout the empire raised a storm in every quarter, but especially in Hungary, where it expressly forbade the use of Hungarian or Latin in official matters. Now, as a matter of fact, the Hungarian nobles at this time had no great regard for the Hungarian language, which they looked upon as a peasant vernacular. They were accustomed to speak German, also French, and especially Latin, which had always been the official language of the law-courts and of legislative debate. But the definite order to substitute German for Latin as the official language was something they would not and did not accept, and thus aroused on the language question they took the first measures to resuscitate their own language, the appointment of teachers of Hungarian in the gymnasia. After the interruption of the Napoleonic wars, the movement proceeded vigorously. In 1830 the Hungarian National Academy was founded. Hungarian literature flourished, and down to the time of the revolution of 1848 and again since the Compromise of 1867, a long series of increasingly stringent language laws has enforced the use of the Magyar tongue. Eventually the only relic of official German in Hungary was in the army,—its "Words of Command." And even this so enraged the Hungarians that it was the dominant issue in the crisis of 1903-06, which nearly led to a complete breach with Austria.

But not satisfied with narrowly escaping Germanization, the Hungarians in their triumphant nationalism proceeded to attempt the Magyarization of their "subject races." The educational system and every power of the government was devoted to the propagation of the Magyar tongue. The desire of the Slovaks and other Slavic peoples, and of the Roumanians in Transylvania, for educational facilities in their own languages was systematically thwarted, and agitation for equal language rights branded as treasonable. Place names were Magyarized by law, the old Saxon Klausenburg appearing as Kolozsvár, etc. The change of personal names to a Magyar form, if partly voluntary, has also been *suggested* to government employees in official circulars. Yet the net result of the Hungarian policy has been to intensify the sense of distinct nationality, and to undermine the loyalty to the state.

The Croats are on a different footing from the Slavs of Hungary proper. The "Illyrian movement" in the first half of the nineteenth century, of which the chief apostle was the writer Gaj, established a Croatian literary language and aroused a national sentiment able to resist the Magyarization which was then threatened and which drove Croatia into the arms of Austria in the Hungarian Revolution. And under the Compromise of 1868, although the union with Hungary, which had existed since the twelfth century, was restored, the Croats retained substantial autonomy and full recognition of their language. It is the official language of the diet at Agram, and the delegates to Budapest, who function only when "joint affairs" are under discussion, may also speak in Croatian, a right which they have on occasion employed as an unexcelled instrument of obstruction. The slightest infringement of the Croatian language rights provokes an outcry loud enough to reach even our American press, as in the case of the Railway Bill of 1907, which legalized Hungarian as the language of the whole state railway system including that of Croatia.

In Dalmatia too, which has belonged successively to Croatia (and so to Hungary), Venice and Austria, Croatian is now supreme in the educational system, here at the expense of the

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diminishing Italian element. The Croatian language is then in an established position, with a flourishing literature and science, the center of which is Agram, and the sense of nationality is correspondingly strong. This leads to the larger question of Serbo-Croatian nationality, a political aspect of which furnished the immediate occasion of the present war.

The Croatians and Serbs are peoples of the closest linguistic kinship, but of the most fundamentally divergent historical development. The fact that the Croatians are adherents of the Roman, the Serbs of the Greek church, is indicative of their past history. The Croatians faced the Occident, the Serbs the Orient. Serbia, after becoming the most powerful Balkan state of the fourteenth century, was prostrated by over four centuries of Turkish rule, its nationality submerged and all but lost. But the language survived and furnished the basis of a national revival. Toward the end of the eighteenth century a widely travelled and broadly educated Serbian, Obrodović, ordered published a series of works in a language intelligible to the people (earlier Serbian writings had been an artificial mixture of Serbian and Russian Church Slavonic), which did more than anything else to awaken Serbian aspirations toward intellectual progress. In the early nineteenth century Vuk Karadžić's collection of Serbian folk-songs awakened European interest in the Serbians, and his philological studies and reforms of orthography laid the foundation of the modern Serbian literary language. Meantime the popular uprisings had led to the autonomy of Serbia.

In view of the profoundly different past history of Serbs and Croatians, the conception of a Serbo-Croatian unity obviously could not be of popular origin. It had its birth in philological and literary circles; and its first and most important realization was the attainment of more complete linguistic unity. This perhaps requires some explanation. Serbo-Croatian speech consists of a series of related dialects stretching from the Bulgarian confines to the Adriatic, a territory comprising Serbia (as constituted before the Balkan Wars, but only a small part of its subsequent extension south), Montenegro, Bosnia, Herzegovina, Dalmatia, and Croatia, the difference being greatest

between the extremes of Eastern Serbia and Croatia in the northwest. But the leaders of the "Illyrian movement," the founders of Croatian literature, Gaj and his fellows, deliberately rejected the local Croatian of the Agram region as of too narrow scope, and adopted an intermediate type, such as Vuk Karadzić had also chosen for Serbian and which with some modification was finally accepted as the Serbian literary language. So it was brought about that the Serbian and Croatian "languages," that is the literary and standard languages as taught in the schools, are virtually the same, only under different names: and written in different alphabets, Servian in the Cyrillic,⁸ Croatian in the Latin.

The achievement of a common literary language has been the means of promoting intellectual unity, and the Serbo-Croatian idea, fostered by the leaders of literature and science in Agram and Belgrade, spread to wider circles and to the field of politics. The cultural and also political union of all Serbo-Croatians became a definite program. On the other hand, the difference of religion, mutual jealousy, and the existence of rival Pan-Serbian and Pan-Croatian radical movements, are serious obstacles to a genuine popular union. The Serbians are apt to speak of the greater Serb people or a Greater Serbia, including all the Croats. The Croats resent such a designation of themselves and their language. They are Croats, and their language may be the same as Serbian, yet it is not "Serbian" but "Croatian." So much is in a name, when national sentiment is involved. The Austrians escape the dilemma in Bosnia by applying the

⁸ One of Vuk's orthographic reforms was the adoption of one letter from the Latin alphabet. This met with violent opposition, as a fatal and unpatriotic concession to Rome. For even such an external feature of language as the form of the letters employed may become an element of religious and national sentiment. Bismarck is said to have refused to read German books printed in Roman type. In Roumania it was not the greater simplicity of the Latin alphabet that enabled it to oust the Cyrillic (one cannot imagine such a change in Russia), but the "Latin race" sentiment. We have noted the former Russian regulation that Lithuanian books could be printed only in Russian characters. When the Turks made some concessions to the Albanians regarding the written use of their language, they still insisted that Turkish characters should be employed. And while this factor is now eliminated, the two rival systems of writing Albanian in the Latin alphabet are under popular suspicion of being agencies of Austrian or Italian propaganda respectively.

term "Bosniak" to the common languages of the Croatian, Serbian, and Moslem elements. The effect of the present war upon the whole Serbo-Croatian question is one of its most interesting problems. If a union of all the Serbo-Croatian speaking peoples is ever realized, that is a genuine union satisfactory to both Croats and Serbians, it will be a remarkable victory of an originally intellectual movement, operating upon linguistic kinship, over exceptional obstacles.

The "South-Slav" question is primarily that of Serbo-Croatian unity, but the term is also used in a wider sense to include the Slovenians, whose language is more closely related to Serbo-Croatian than to any other Slavic tongue, and whose territory borders on Croatia. The main seat of Slovenian nationality is Carniola, with Laibach its political and intellectual center. Centuries of Germanization had reduced Slovenian territory to a small fraction of its former extent, and even there German had become the language of the larger towns, and the sense of distinct nationality was almost extinguished. But here too in the nineteenth century the language was revived and has gained full recognition in local administration and education. The Slovenian movement is aggressive, and of peculiar political interest from the fact that, while the city of Trieste is mainly Italian-speaking, its Hinterland is Slovenian. When it is a question of resisting Italy, Austro-Hungary can count on the loyalty of Slovenian, Croatian, and Dalmatian.

The Bulgarians, while not included in the prevailing political use of the term "South Slav," are also southern Slavs. That is, their language is one of the southern Slavic languages, and they are regularly and properly reckoned as one of the Slavic nationalities. It is true that the Bulgars, who gave them their name, were a tribe of Asiatic invaders, who conquered and unified a group of Slavic tribes settled south of the Danube, and established the old Bulgarian state, which in the tenth century was the most powerful in the Balkans. For a time the rulers kept their Asiatic speech, also using Greek for official purposes, but were eventually absorbed in the Slavic masses. The Bulgarians are therefore no more an Asiatic people than the French are Germanic because the Franks gave them their name and founded

their state, or than the Russians are a Scandinavian people because the Scandinavian adventurers called Ros gave them their name and founded their state. Certain physical characteristics of the Asiatic are, however, still evident, especially in eastern Bulgaria. And the Asiatic connection is not forgotten at times when their relations with other Slavs are strained, as with Russians or Serbians, who are then inclined to dub them "Semi-Slavs" or "Mongols."

The Bulgarians were the first of the Balkan peoples to fall under Turkish rule, and the last to emerge, if we except the Albanians, among whom Turkish rule was hardly more than nominal. The Bulgarian nationality was the one most completely submerged, the most nearly lost forever. It was not so much from the Turks that their denationalization was threatened as from the Greeks, who held complete control of church and education. The well-to-do Bulgarians spoke Greek and called themselves Greek. The peasants spoke their various dialects, but had lost all national consciousness, and the very name Bulgarian was forgotten. The revival began with a resuscitation of the language: the first modern Bulgarian book was printed in 1806, the first Bulgarian school was founded in 1835 and in two years the number had become fifty. The long struggle for church independence, vigorously opposed by the Greeks, culminated in the establishment of the Bulgarian exarchate in 1870. The people which had remained docile and unmoved at the time when the Serbians and the Greeks were fighting for independence was now at last awakening, though even in the Russo-Turkish war it was only an interested spectator. It is the development of Bulgaria since 1878 that has astounded the world. But this was made possible by the preceding period in which national consciousness was revived through the language.

The two Balkan peoples that are neither Slavic nor Greek, the Roumanians and the Albanians, obviously owe their distinction of nationality to their language. The Roumanian language is a derivative of Latin. Hence the Roumanians, no matter what people they were before being Romanized or in what region this process took place (for it is by no means certain that they represent the unbroken continuation of Roman col-

onies in Dacia), are a "Latin race" in the same sense as the French or Spanish. This is a definite factor in their national consciousness and affects their sympathies. But this consciousness of Latin nationality is a matter of comparatively recent history. From the time of their earliest mention the Roumanians appear in connection with Slavs, and their church language was the Church Slavonic till near the middle of the seventeenth century. There was no written Roumanian before the middle of the sixteenth, and this was written in the Slavic (Cyrillic) alphabet down to most recent times, the official adoption of the Latin alphabet in Roumania dating from 1873.

It was the Catholic clergy of Transylvania that first taught the Roumanians that they were a "Latin race" and aroused a sense of distinct nationality. This national sentiment spread to the larger body in the present Roumania, which was under Turkish rule and, in the eighteenth century and beginning of the nineteenth, under dominant Greek influence, and here it developed most effectively. Since the independence of Roumania it has in turn supported the Transylvanian Roumanians in their resistance to Magyarization, and hopes for their ultimate political union with Roumania.

The Vlachs of Macedonia, whose vernacular is closely akin to Roumanian, have never developed any sense of Roumanian nationality. The Roumanian propaganda which started about 1886 had small effect. The great majority of the Vlachs speak Greek, as well as their own dialect, and are Greek in sentiment. In fact some of the most ardent supporters of Greek nationality are of Vlach descent, as Mr. Averof, the donor of the stadium at Athens and the warship of that name.

The Albanians represent a portion of the old Illyrians which in this mountainous region just missed the complete Romanization and subsequent absorption by Slavs that took place farther north. We say just missed complete Romanization because, as it is, the largest single constituent of the Albanian vocabulary is of Latin origin; and in spite of the very extensive Turkish, Greek, and Slavic elements, due to later borrowing, it would be reckoned as one of the Romance languages, were it not for the presence of a perfectly distinct pre-Roman substratum.

If we except the partial and shortlived union under their national hero Skanderbeg in the fifteenth century, the Albanians never formed a distinct state. The language only has kept alive their sense of being a distinct nationality, and in the revolution of 1911-12 the recognition of Albanian as the official language in Albania and the right to organize education in their own language was one of their formal demands. In the last few years the educated leaders have been busy with the problem of a standard language and its most appropriate written form, to replace the variety of dialect and transcription which had been in vogue. This may seem ludicrously futile in face of the present chaotic conditions. But it is by education, and in their own language, that it will be possible, if at all, to overcome such obstacles to effective union as the ignorance and backwardness of the bulk of the population, their primitive tribal organization with the unwritten law of blood-feuds, and the religious division of Moslem and Christian, and of the latter into Catholic and Orthodox. And if it seems that the experiment of an independent Albania is a hopeless failure, it must be remembered that the continuance of foreign intrigue has never left it a fair chance.

If the relation between language and nationality has been illustrated chiefly from the minor peoples of Eastern Europe, it is because here the evolution or revival of national sentiment has been of so recent date as to make this relation particularly conspicuous. For the more firmly established nationalities the situation is so familiar that it is almost superfluous to refer to it. It is only the exceptional case, like that of Switzerland or Belgium, that excites remark. Furthermore, language may seem to lose relative importance in the presence of other factors such as a strong national state. But its vital relation to nationality is no less real. Does any one doubt, for example, that the German language is not only the most conspicuous outward token but the very essence of German nationality? "Preserve our German language" has been the motto of the Pan-German League, as "Preserve our Italian language" has been the appeal of the Italian Irredentists.

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THE JUSTICIABILITY OF INTERNATIONAL DISPUTES¹

JESSE S. REEVES

Professor of Political Science, University of Michigan

The appalling record of the past year and a half ought to make us, interested in international law, extremely modest. Professing that we expound international law as it is, we have been deluding ourselves and really setting forth international law as we believed that it ought to be. The universal bankruptcy of normal international relationships has shown to us how great a gap there is between that which we had conceived to be and that which really exists. Many of the foundations of international law we now see to have rested upon a conception of international society which did not really obtain. Perhaps, too, although professing contact with the actual, we have been living in an unreal world, a world wherein the ideal was given a much wider range and play than we were justified in believing. Any attempt to reconstruct the formal bases of international law—and such reconstruction must be made—must take account not only of the experiences of the present war, but of the long series of half-submerged elements which led to the present disaster almost with the inexorability of the forces of natural law. Shocked and benumbed as we are by the constant revelations of horror in these past months, there is also the awful realization that, after all, what has taken place has been largely the result of factors seemingly without immediate human direction.

Any plan for a permanent peace, and for the amicable settlement, after this war is over, of disputes between states, must take into consideration these facts and look at international society not as we have looked at it, as a static condition of man-

¹ A paper read at the twelfth annual meeting of the American Political Science Association.

kind, but as one in which there are dynamic factors too vast and intricate for any decisive plan adequately to include and reckon with all the circumstances. These dynamic factors have to do not only with the relations of states with each other, a subject to which international law in the past has confined itself, but with the larger relations of groups to groups both within and without states, of individuals to individuals, of world movements of population, of earth-hunger and its appeasement, and of the strivings of international commercial competition. These things must be reduced to the régime of law, to an acceptance of a universal *status quo*; and in the past this has never come about except under a universal imperial dominion, or world-state.

Slowly and painfully must the edifice be reconstructed, from foundation to superstructure. The basis of a régime of law among states must be those really juristic principles, recognized by the members of the world-society as not repugnant to the realization of national ideals on the one hand, and on the other as fitting in with the generally accepted ideals of justice and of fair dealing on the part of peoples within a state.

Such a limitation may seem highly reactionary, and to run counter to the accepted theories of international law; but, if you will permit it, international law has been in the past something of an esoteric science. The formal elaboration of its principles has been made too often by those who have not only an idealistic conception of world-relationship, but by those who have from their position had too little contact or even sympathy with the actual conditions of popular life. After all, international law has been written and to a large extent been put into effect by those having the aristocratic point of view. The determination of the foreign policies of a state has never been—perhaps cannot as yet be—fixed by popular methods.

What parts of international law can properly be claimed to fall within the limits just set forth? Can we include what have been called for centuries the primordial or absolute rights of states? An international law built upon these principles connects at once with the absolutist theory of the state, makes

world-society simply the sum of the relationships between primordial units, and has little to do with what lies back of and within such units. It makes such units equal with each other in legal rights and legal duties. It stresses absolute independence, together with a theory of sovereignty associated with the organic theory of the state. At certain periods in the development of the world such a group of conceptions makes for progress. At other periods it makes for reaction, just as the doctrine of natural rights was revolutionary in 1776 and 1789, and has become reactionary under a newer theory of social justice.

The doctrine of natural rights within the state cannot be eliminated. It must be restated. A natural right today we conceive to be one which society guarantees to the individual, not merely that he be protected in a fixed sphere of action, but because by such guarantee to the individual the rights of the whole are best preserved and protected. In like manner the traditionally primordial rights of states must in time be re-stated, not in terms of the state, but in terms of humanity and of a world-society. The state, according to such a theory, is to be protected in its international legal rights and duties not in order to guarantee its existence as an end in itself. It is protected in order that the good of the whole of humanity and civilization may be advanced.

If this statement be correct, then we must recreate and reconstruct the doctrines of independence and equality if not in the light of pragmatism at least in terms of social dynamics. The theoretical position of sovereignty within the state must be attacked anew, even if it include a reconsideration of the conception of the state as modified by the various factors which give it existence. We are met at the outset with the objection that such a doctrine does not square with the facts of actual world-life. Perhaps not as yet; but it is incontestably true that the formal bases of Grotian International Law do not accord with the actualities of twentieth century world-life.

International law has been traditionally defined as the body of rules which states habitually observe in their mutual dealings. This definition raises the question: Why are certain rules habitu-

ally recognized? Why habitually? Because, in the first place, such rules are assumed to fit the ideals of international conduct ingrained in the habits of civilized mankind generally; and secondly, that such common ideals do not run counter to the policies of states in their ordinary mutual relationships. The observance of international law, after all, we must confess, depends largely upon national policies. In so far as national policies coincide with certain generally accepted justiciable principles, we have a stable foundation for international law. Where policies intervene we have a situation in which dynamic factors have not yet been resolved, and to that extent the law does not actually exist. To illustrate: the doctrine of the equality of states is not effective under any principles of policy such as that built up under the doctrine of balance of power. In strict law one state has the right to sell territory to another and to put, after such cession, the other power into possession. Yet there are few quarters of the globe where such a legal right can be exercised. The legal right, let us say, of Denmark to sell its West Indian possessions, and to put the vendee into possession is unquestioned. That the policy of the United States would interdict such a transfer is equally apparent. As to the universal validity, therefore, of this elementary legal right, the United States is not in accord. And here we get at the essential difference between justiciable and non-justiciable controversies in international law.

The term justiciable has been made use of in English for many centuries and it usually carries with it the idea of a court proper to settle controversies. The jurisdictional idea is paramount. Now the creation of a court and the setting up of its jurisdiction is, to that extent, a recognition of a juristic status quo. Such a conception was conspicuously absent from the federal court of appeals under the articles of confederation. The notion that legal coercion is inseparably connected with the life and vigor of a court means acceptance, voluntary or forced, by the peoples over whom the jurisdiction is given, of a juristic status quo. The setting up of a court and the giving to it of jurisdiction mean the possession, by the parties under the jurisdiction of

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the court, of common legal conceptions and principles, at least for the purpose of maintaining the jurisdictional efficacy of such a court.

International relationships must rest, as was recently said by our distinguished secretary of state, upon a common regard for law and humanity. Without such an acquiescence on the part of the governments of states in the principles of law and humanity, no international court can be effective. There must, however, be not merely a passive acquiescence in such principles by the peoples of the various countries whom the governments merely represent, but an aggressive belief in such principles which if need be may be translated into action. The provision in international arbitration treaties, that questions vitally affecting the honor of the independence of states are not subject to arbitration, although frequently criticised in the past, is seen after all to rest upon a profound psychological basis. Upon such questions there is not yet a common factor of legal ideas sufficiently in harmony with common national policy, to the extent that any real justiciability is possible.

An illustration of this may be seen in two incidents described by Mr. Thayer in his recent life of John Hay. The first is the attitude of Mr. Roosevelt toward Germany's alleged aggressions against Venezuela following upon the so-called pacific blockade of 1902. Germany was forced by the United States, it is said, to arbitrate the question of her claims against Venezuela. Certainly it would seem that these claims were properly justiciable in a court of arbitration, and a precedent for forcing such settlement was found in President Cleveland's policy towards Great Britain in 1895. On the other hand, President Roosevelt, assuming that the claim of the United States with reference to the Alaska boundary was eminently proper and just, is said to have served notice upon Great Britain that in certain contingencies the United States would refuse to arbitrate the boundary question and would proceed to draw a line for itself.

Both questions were properly justiciable and yet in both cases the underlying reasons why arbitration was had were kept concealed from the public. That the United States was eminently

successful in both as a matter of policy is proved by the result; but that the peoples of the countries concerned were educated to a more rational method for the settlement of international differences may well be doubted. The refusal of Germany to arbitrate, and the refusal of Great Britain to accede to our method of arbitration, might conceivably have resulted in a check to the attainment of the policies of the United States, and in a great retardation in the acceptance of the principles of international arbitration. If so, we should have had a breach between this country and the nations mentioned which would have been justified on the grounds of American policy. Popular approval would then have been sought not so much for the purpose of justifying international arbitration as a principle, but to maintain what was assumed to be the paramount rights of the United States in the western hemisphere. This is said not with the idea that the policy of maintaining such a position by the United States is inherently wrong, but to suggest that what made the disputes really justiciable was not in any sense based upon a popular demand for arbitration, but because the policy of the United States happened to harmonize with the narrower legal considerations.

The earlier case, when President Cleveland demanded that Great Britain arbitrate the Venezuela boundary, still more clearly illustrates the difference between a popular demand for a legal settlement of an international dispute and the popular approval of American policies. That Mr. Cleveland's aggressive attitude with reference to Great Britain and its refusal to arbitrate the Venezuela boundary controversy was popularly acclaimed in this country, there can be no doubt; but popular enthusiasm was aroused for the support of a national policy irrespective of the demand for arbitration which the policy attempted. We cannot truthfully say that popular opinion in this country can be aroused with reference to any particular method of settling international disputes. It can, however, under skillful direction, be aroused for the support of policies which the government of the United States assumes with reference to any foreign power. This we may deplore, but we must recognize that such

is the fact. These illustrations, it is believed, show how far, even in a democratic republic like our own, we are from an acquiescence, governmental or popular, in a general international legal status quo.

It has been suggested that the United States supreme court, with its jurisdiction over controversies among States, offers a pattern for a possible world court wherein all matters of international differences may be decided. Assuming that such a world court could have the coercive power of a league to enforce peace, guaranteed by the countries of the world, it would still lack the important basis which the United States supreme court has in its jurisdiction over state controversies. When a State is admitted into the Union, it is admitted upon a plane not only of legal, but also of a certain political, equality with other States. No such thing is possible as the aggression of one State upon another with reference to territory, or commerce, or the movements of population. In other words, the admission of a State into the Union proceeds upon the recognition of the great constitutional status quo.

Any plan for a world court, backed by a league to enforce peace, must proceed upon the theory of an accepted status quo not only with reference to the legal relations of states with each other, but with reference to the conditions within states, governmental and political. The map of the world must be fixed as the map of the United States within its boundaries is fixed. Things as they are, or as they will be when such a plan is put into effect, must be taken as the basis for all time to come. *De facto* states will be *de jure* states; *de facto* governments, *de jure* governments—to reverse the principles of the Holy Alliance, which is the attempt in history most nearly akin to the one suggested.

If there be controversies among the States of the union which are not justiciable, it is hard to conceive of them since the civil war. The position of the State in the Union is fixed; and at all points, at least so far as its relations with other States are concerned, which might lead to aggression, it is susceptible of some kind of legal coercion. If we conceive of the question of seces-

sion as in the nature of a controversy between States, such a controversy was not justiciable. Not being justiciable, the present status quo was reached by war.

The range of justiciability with reference to controversies between the states of the world is limited, then, by the common factor of juristic principles common to all civilized peoples and accepted by the governments of such peoples as in harmony with their state policies. That this range can be of but slow growth must be admitted. At present it would seem that the so-called international mind no longer exists. If the present war is productive of any good, it must be in the creation of a new international mind, based not upon an unanimity of expression by the governments of states, but by the common convictions of a militant humanity.

The comparatively small number of the subjects of international law hinders rather than advances the range of international justiciability. A norm of law is most easily ascertained when it affects a great mass of legal subjects. When the parties to international relationships number but half a hundred, the usual rarely occurs, the unusual dominates. Within a state the greatest validity is given to a rule of action when that rule is applicable to and adopted by a great mass of legal subjects. Only out of such a scheme does a true norm of law proceed; and in the long run the sanction of a rule of municipal law is most potent when the rule attaches to the greatest number of legal subjects.

It is in connection with this idea that the relative inefficacy of law-making treaties is to be ascribed. What Savigny a century ago so pertinently described as the proper basis of the codification of municipal law—a long period of development of common legal interests and ideas—founded upon a conscious national solidarity—should be considered with reference to international law. The so-called great international law-making treaties are at the present time but monuments of more or less benevolent aspirations. Like laws adopted by a state in unmindfulness of actual conditions or of the legal prepossessions of a people, many international statutes have broken down because

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they did not express the common fund of ideas with respect to international life. Take, for instance, the Hague convention with reference to the inviolability of neutral territory. That convention was ratified by the Senate of the United States and is now the supreme law of the land. Yet who can seriously maintain that the world or even the United States is educated up to the militant acceptance of such a general principle?

Again, geographical factors reduce the range of justiciability of international disputes. The influence of these factors upon international law is incomparatively greater than ordinarily one is led to believe. We must face the fact that the old idea of eternal principles of international law, valid *quod semper, quod ubique, quod ab omnibus*, is modified by the specific situations of the various countries of the world. To admit that such factors wholly prevail over the rules is to deny that international law exists; but that geographical factors do modify these rules is never more evident than it is during war. The peculiar situation of the West India Islands with reference to the United States, of Portuguese Southeast Africa to the Boer republics, of the Scandinavian countries and Holland to Germany—these actually modify what otherwise might be considered as universal principles; and the extent to which this modification takes place practically limits the range of justiciable methods in the settlement of international disputes.

Finally, there must be recognized what may be called the sphere of an international law of crime. It is possible that in combating Austin's doctrine that international law is not true law, we are in danger of neglecting what he claimed for it, a positive international morality. Such an attitude is more likely as long as international law is based upon a political philosophy which sets forth the state as a person essentially non-moral. Acts which shock the most obvious claims of humanity come to be looked at not as international crimes but as international torts to be adjusted through diplomatic apology and assuaged by money payment. Anything whether in the form of certain kinds of pacificistic propaganda or in the smugly polished phrases of diplomatic utterance, which glosses over the essen-

tially anti-social and therefore criminal nature of certain international acts may contribute to a fatal confusion of ideas. This among a people already far too regardless of the value of human life may dull its sensibilities, weaken its moral fibre, and destroy its desire and ability to defend those things which are of greatest value to civilization and society.

If what has been said is regarded as a confession of failure, I shall feel that it has been said to no purpose. My idea is rather that we must, as interested in a noble science, take account of things as they actually are and realize that the international law of the future cannot be founded upon the one and single principle of state personality; but that it will rest, upon the slow and painful accumulations of experience; not that it should depend upon diplomatic opportunism alone, but upon the wider principles of human kinship and of humanity; that international law after all, to be a valid law among states, cannot be merely the idealistic portrayal of the philosophic jurist or of the policy of expediency adopted by the bureaucrat. It may be that the state is but a passing phenomenon. It must be that the theory of the state as a juristic person must be re-examined in terms of humanity. Until this is done the prospects of the future in the way of the settlement by legal methods of all or even the more important international disputes cannot be predicted with anything like confidence.

QUASI-LEGISLATIVE POWERS OF STATE BOARDS OF HEALTH¹

U. G. DUBACH

School of Commerce of Oregon Agricultural College

The aim of the present paper is to describe the regulative powers granted to state boards of health, and to consider the wisdom of these grants as well as their validity as tested by the principle that the law-making powers granted to legislatures may not constitutionally be delegated by them to other agents of government.

State boards of health, while primarily administrative bodies, have generally a more or less extensive power to make regulations in supplement to and having the force of statute law. Questions thus arise as to the extent and validity of the ordinance-making powers granted. Does the power to make these regulations, having the force of law, change the nature of these boards?

* Under what conditions may they exercise their power?

THE NATURE OF THE POWER

In *State vs. Burdge*, a Wisconsin case, the court held that "The state board of health had no legislative power, properly so called, and none could be delegated to it. It is purely an administrative body. . . . It cannot be doubted but that under appropriate general provisions of law in relation to the prevention and suppression of dangerous and contagious disease, authority may be conferred by the legislature upon the state board of health or local boards to make reasonable rules and regulations for carrying into effect such general provisions which will be valid, and may be enforced accordingly. The making of such rules is an administrative function, and not a legislative power,

¹ In substance a chapter of a thesis on "State Administration of Health."

but there must first be some substantive provision of the law to be administered and carried into effect. The true test and distinction whether it is administrative, and merely relates to the execution of the statute law lies between the delegation of the power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised in pursuance to the law. The first cannot be done. The latter can."² The supreme court of Indiana denied that the legislature can relieve itself of its responsibility in legislation. "It cannot confer on any body or person the power to determine what the law shall be, as that power is one which only the legislature, under our constitution, is authorized to exercise; but this constitutional inhibition cannot properly be extended so as to prevent the grant of legislative authority, to some administrative board or other tribunal, to adopt rules, by-laws, or ordinances for the government of, or to carry out a particular purpose. It can not be said that every grant of power to executive or administrative boards or officials, involving the exercise of discretion and judgment, must be considered a delegation of legislative authority. Laws must be complete but methods and details may be delegated to some designated body or officer. In order to secure and promote the public health, the State creates boards of health as an instrumentality or agency for that purpose, and invests them with the power to adopt ordinances, by-laws, rules, and regulations necessary to secure the objects of their organization. While it is true that the character or nature of such boards is administrative only, still the powers conferred upon them by the legislature, in view of the great public interests confided to them, have always received from the courts, a liberal construction, and the right of the legislature to confer upon them the power to make reasonable rules, by-laws, and regulations, is generally recognized by authorities."³ The extreme view is expressed by the Vermont court. "Police powers may be lawfully delegated to municipal corporations, and

² State vs. Burdge, 95 Wis. 390.

³ Blue vs. Beach, 155 Ind. In accord with this case, Isenhour vs. State, 157 Ind. 517.

to local or state boards of health, and, when so delegated the agency employed is clothed with power to act as fully and efficiently as the legislature itself."⁴ It seems perfectly clear then that the boards of health are purely administrative bodies, and yet may under certain circumstances exercise the power to make regulations having the force of law.

THE EXTENT TO WHICH THE POWER HAS BEEN GRANTED

The power to make regulations having the force of law has been granted in various degrees; in some cases covering everything applying to health; in others, certain specified particulars; in some cases in very general terms, and in some, in terms intended to be so exclusive and inclusive as to be free from interference from the courts. A few quotations from the statutes of various States will illustrate. The law of Indiana says the state board of health shall have power "to pass rules governing the duties of all health boards and all health officers, governing the collection of vital statistics, governing the hygienic disposal and transportation of the dead, governing the specific features of quarantine and for the enforcement of the state health and registration laws."⁵ The board has issued very elaborate and concrete regulations under authority of this section.

In Illinois "The board shall have authority to make such rules and regulations and such sanitary investigations as they may from time to time deem necessary for the preservation and improvement of the public health, and they are empowered to regulate the transportation of the remains of deceased persons."⁶ The attorney general has interpreted the above to mean that the state board has the power and is duty bound "to make any and all rules and regulations which they deem necessary to preserve the public health," and that the whole power of the State would be used to enforce them.⁷

⁴ *Starte vs. Morse*, 80 Atl. Ren. 189.

⁵ Acts, 1909, ch. 144, sec. 6.

⁶ Rev. Statutes 1907, ch. 126, sec. 2.

⁷ *Public Health Laws and Sanitary Memoranda*. Issued by the State Board of Health, 1907, p. 6.

Pennsylvania makes it the "duty of the advisory board to advise the commissioner on such matters as he may bring before it, and to draw up reasonable orders and regulations as are deemed necessary for the prevention of disease and for the protection of the lives and health of the people of the State, and for the proper performance of the work of the department of health."⁸ Various specific grants of power to make regulations are mentioned in the laws pertaining to the different departments of work.

Wisconsin provides that the board "may make, alter, modify or revoke rules and regulations for guarding against the introduction of any such diseases into the State [previously specified in the law] for the quarantine and disinfection of persons, localities and things infected or suspected of being infected by such disease, for the transportation of dead bodies, for the speedy and private interment of the bodies of persons who have died from contagious disease, for the proper observance of provisions" of the law relating to specified public buildings and premises, etc. "The board may declare any or all of its rules and regulations made in accordance with the provisions of this section to be in force within the whole or any specified part of the State and make them applicable to any vessel, railway car or public vehicle of any kind."⁹

Some States give the board very limited power to make regulations. In New York the board has power to make rules governing the collection of vital statistics, transportation of dead bodies, determining which diseases are communicable, and "may" make rules for the protection of water supplies; in Massachusetts, "the sanitation of police station houses, lockups, and houses of detention and the use of the public drinking cup and roller towels" and governing public water supplies; in Alabama, "the sanitation of railroad depots and passenger cars;" in Arkansas, "only the transaction of business," while the Connecticut laws give no regulation making power.¹⁰

⁸ Sec. 5, Act Apr. 27, 1905, Public Laws, 313.

⁹ Sec 1408, Wis. Statutes, 1898.

¹⁰ *Statutes and Public Health Bulletin*, no. 54, p. 43.

In twenty-four States the board of health is given power to add to the list of diseases to be reported which are specified in the law.¹¹ Specific power is granted to enact rules to prevent the introduction and spread of communicable diseases in thirty-five States.¹² Some States, as Oregon and Utah, grant a similar power for the "preservation of public health," or as Illinois and Iowa, the "preservation and improvement" of the public health, or as in Pennsylvania the protection of "health and life." In several of the above States power is given to make special regulations in cases of emergency. Power to make rules governing the transportation of dead bodies is specified in the laws of twenty-three States.¹³ Seventeen States give power to make rules governing quarantine.¹⁴

The power to make regulations governing water supplies varies greatly in the different States. The Massachusetts board may make rules and regulations to prevent the pollution and to secure the sanitary protection of all such waters as are used as sources of water supply.¹⁵ The Minnesota laws give the board authority to make rules to prevent "pollution of streams and other waters and the distribution of waters by private persons for drinking or domestic use."¹⁶ The Montana board may make regulations to prevent pollution and secure sanitary protection of

¹¹ Arizona, Colorado, California, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Virginia, Washington and Wisconsin.

¹² Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

¹³ Alabama, Arizona, Arkansas, California, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Minnesota, Montana, New Jersey, New York, North Carolina, North Dakota, Ohio, South Carolina, Vermont, Washington and Wisconsin.

¹⁴ Florida, Georgia, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Montana, New Hampshire, North Carolina, Ohio, Oregon, South Carolina, Texas, Utah, Virginia, Wyoming.

¹⁵ Sec. 113, ch. 75, Rev. Laws. The Connecticut and Merrimac rivers excepted.

¹⁶ Sec. 21, 31 Rev. Laws, 1905.

water for public use.¹⁷ The New York state health commissioner may make rules and regulations for the protection of all water supplies except those waters and sources affecting the supply of New York City. For these the commissioners of water supply, gas and electricity of New York City make rules with the approval of the state commissioner.¹⁸ The board of North Carolina has power to make "such reasonable rules and regulations as in its judgment may be necessary to prevent contamination and to secure other purifications as may be required to safeguard public health."¹⁹

Vermont gives its board power to make regulations to prevent pollution of waters for domestic use.²⁰ In other States where the boards have power to grant or refuse permits for waterworks and sewerage plants, and to investigate such concerns and to issue orders affecting them, they, in fact, enjoy a wide power of making regulations. Pennsylvania and Ohio are examples. The boards of several States have power to issue regulations governing water supply, drainage and sewerage of cities, towns and villages. This is true in Florida,²¹ Virginia,²² West Virginia,²³ and Wyoming.²⁴

In Louisiana, Minnesota and Iowa practically the whole health administration rests on regulations made by the board. The same was true in Texas and California but the codes also drafted by the boards were subsequently enacted into laws. Power to make regulations for the government of the board and to carry out its functions, is granted in nineteen States.²⁵

Idaho, Kentucky, Maine, Michigan, Montana, Oregon and Tennessee provide that the regulations are "subject to the pro-

¹⁷ Rev. Laws, 1911, sec. 1560.

¹⁸ Cons. Code, 1909, sec. 71, as amended by ch. 695, Laws 1911.

¹⁹ Sec. 24, *Health Code, 1912 Bulletin*, March, 1912, p. 14

²⁰ Sec. 5497, Rev. Statutes.

²¹ Laws, 1909, ch. 593, no. 12, sec. 1.

²² Laws, 1910, ch. 179, sec. 1.

²³ Rev. Statutes, 1910, sec. 4382.

²⁴ Laws, 1906, ch. 150, sec. 4382.

²⁵ Arizona, Arkansas, California, Colorado, Georgia, Indiana, Kansas, Nebraska, New Mexico, North Dakota, Massachusetts, Mississippi, Missouri, South Dakota, Virginia, Wisconsin, Wyoming, and West Virginia.

vision of the health acts," and Georgia, Minnesota, Missouri, Nebraska, New Mexico, Utah, Virginia and West Virginia, that they must not be contrary to existing laws. In Rhode Island the regulations must be approved by the governor; in Maine, by the governor and council; and in Minnesota, by the attorney general.²⁶

ATTITUDE OF THE COURTS TOWARDS THE EXERCISE OF THIS POWER

1. Making Regulations Determining which Disease must be Reported

The law of Iowa conferred upon the state board of health the power to draw up a health code and provided that any one who knowingly fails, neglects, or refuses to comply with and obey any order, rule or regulation of the state board of health is guilty of a misdemeanor. The board placed scarlet fever on the list of reportable diseases. The law was attacked on the ground that it did not define the crime for which it provided punishment. The court said: "We think it clear that the legislature may provide for the punishment of acts in resistance to, or violation of, the authority conferred upon such subordinate tribunal or board. When these boards duly adopt rules or by-laws by virtue of legislative authority, such rules and by-laws, within the respective jurisdiction have the force and effect of a law of the legislature; and like an ordinance or by-law of a municipal corporation they may be said to be in force by the authority of the State." A certified copy of a publication of the regulations containing the rule in question is sufficient evidence to show the existence of the rule and knowledge of it.²⁷

2. Making Regulations to Prevent the Introduction and Spread of Contagious Diseases

Under the law giving it power "to make such rules and regulations, and to take such measures as may in its judgment be

²⁶ *Statutes and Public Health Bulletin*, no. 54.

²⁷ *Pierce vs. Doolittle*, 130 La. 333.

necessary for the protection of the people of the State from Asiatic cholera, or other dangerous and contagious diseases," and other general powers, the state board of health of Wisconsin passed a resolution requiring all children to be vaccinated as a prerequisite to attend school, and ordered the regulation to be enforced at Beloit.²⁸ There was no epidemic at Beloit and but a single case of small-pox which was properly quarantined. The court held the regulation invalid. "There is no statute which requires vaccination as one of the conditions of the right or privilege of attending the public schools; and in the absence of any such statute, we think it cannot be maintained that the rule relied on is a valid exercise of the power of the state board of health. The state board is the creation of the statute. It has only such powers as the statute covers. It has no common law powers. . . . The powers of the state board of health, though quite general in terms, must be held to be limited to the enforcement of some statute relating to some particular condition or emergency in respect to the public health; and although they are to be fairly liberally construed, yet the statute does not, either expressly or by fair implication authorize the board to enact a rule or regulation which would have the force of a law changing the statute in relation to the admission and right of pupils of a proper school age to attend the public schools." The court grants that reasonable regulations having the force of a law could be made to carry into effect the general provisions of a statute, but such a regulation as this could be made only by authority of a statute. Furthermore, the regulation was held unreasonable for there was no epidemic calling for such drastic rule. All regulations must bear the test of reasonableness.²⁹

The Indiana board under a similar general power enacted a regulation providing that when an epidemic of small-pox was impending a local board of health could make a rule requiring vaccination as a prerequisite of school attendance. In passing on the validity of this regulation, the court said: "It is true that

²⁸ The regulation was general in terms, but apparently the board expected it to be enforced only when local authorities were ordered to put it into effect.

²⁹ *State vs. Burdge*, 95 Wis. 390.

such rules and by-laws must be reasonable and boards of health cannot enlarge or vary, by the operation of such rules, the powers conferred upon them by the legislature, or any rules or by-law which is in conflict with the State's organic law, or antagonistic to the fundamental principles of justice, or inconsistent with the powers conferred upon such boards would be invalid. . . . There is no express statute in this State making vaccination compulsory, nor imposing it as a condition upon the privilege of children attending schools, and in the absence of such a law, the exclusion must be justified by an emergency."³⁰ The Illinois supreme court held on the same conditions that "the powers of the board are limited to the proper enforcement of statutes, or provisions thereof, having reference to emergencies requiring action on the part of the agencies of the government to preserve the public health and to prevent the spread of contagious disease."³¹ The state legislature may make vaccination a condition of attending school,³² or if the statute expressly confers the power to make such regulation it is valid though no epidemic is impending.³³ The same power is upheld when exercised under a municipal ordinance when an epidemic is impending.³⁴ A local board may make a regulation requiring every one to be vaccinated when acting under authority of a statute.³⁵

Under the power to adopt regulations to prevent the spread of contagious and infectious diseases, the state board of Kentucky provided that all dairy cattle must submit to a tuberculin test to

³⁰ *Blue vs. Beach*, 155 Ind. 121.

³¹ *Potts vs. Breen*, 167 Ill. 67. Reaffirmed in *Lawbough vs. Board of Education*, 177 Ill. 572.

³² *Abell vs. Clark*, 84 Cal. 226. In re *Walters* 33 N. Y. Supplement, 322.

³³ *Bissel vs. Davidson*, 65 Conn. 183.

³⁴ *Duffield vs. Williamsport School District* 162 Pa. State 476.

³⁵ *Jacobson vs. Mass.*, 197 U. S. 11.

Though it was not necessary to the decision of the case, the Supreme Court of Wisconsin held in *State vs. Burdge*, 95 Wis. 390 (cited above) that the board of health could not make a regulation requiring vaccination as a condition of school attendance even though acting under a statute giving it authority to do so unless an epidemic existed. This decision is contrary to the general opinion. The subject is fully discussed and citations given in *American State Reports*, Vol. 80, p. 230, in connection with *Blue vs. Beach*, 155 Ind. 121, and in 29 L. R. A. 251 in connection with *Bissel vs. Davidson*, 65 Conn. 183.

be made by the veterinary surgeon of the board or his assistants, and where cattle responded, the owner must destroy them or the veterinary would do so at the owner's expense. In passing upon the validity of the regulation the court saw in it simply a completion of legislative enactment. "Regulations that are not unreasonable and oppressive, and that are calculated to bring the disease under effective control and stop its spreading, are not statutes. They are not something in addition to, but are details within the statute passed by the state legislature. They must be germane to the statute, and in their execution have reference solely to the object aimed at by the statute." Certain limitations upon the action of health boards exist. (1) "The existence of the disease in the community must be a fact, and not a mere suspicion. (2) The regulation adopted for testing its presence in the particular animal or herd, must be such as is accepted by science as one reasonably calculated to discover it. (3) If isolation or destruction is adopted as a remedy, it must have been accepted by the medical profession that the treatment is one well calculated to eradicate the disease and stop its spreading. If the boards proceed otherwise, they do so at their peril."³⁶

3. Rules Governing the Transportation of Dead Bodies

Under the general power to make rules "to prevent outbreaks and spread of contagious diseases" the Indiana state board provided that "Every dead body must be accompanied by a person in charge, who must be provided with a ticket marked, and also present a full first class ticket marked 'corpse' and a transmit permit from a board of health or proper health authority giving permission for the removal, and showing name of deceased, age, place of death, cause of death (and if a contagious or infectious disease), the point to which shipped, a medical attendant, and name of the undertaker." In this case the transmit permit did not contain the name of the medical attendant, so the railroad company refused to accept the body. The court sustained the

³⁶ Kentucky Board of Health Report, 1908-1909, p. 72

railroad company and the regulation of the state board of health. The regulation was reasonable in character and such as to protect the public health.³⁷ Since this time the board of health of Indiana has been granted specific power to regulate the transportation of dead bodies. This case seems to indicate that a state board may make such specific regulations where it is given general power to make rules to protect public health against contagious diseases.

4. Quarantine Regulations

Under authority of a law giving it power to make general rules for the detention and inspection of all travelers and their property when known to have been exposed to certain contagious diseases or to have come from a locality where such diseases exist, the Michigan state board made a ruling that "all baggage of all immigrants, and all containers of such baggage, destined to pass through Michigan must be detained until disinfection" unless it has a certificate from an inspector of the Michigan board of health. In reviewing the case the court said: "The rule in question did not make it a prerequisite of inspection that the baggage come from a locality where such disease existed, as ascertained either by the board or inspector, and in this respect was broader than the statute, and can not be sustained."³⁸ In other words, had the board limited its ruling to those goods coming from places known to be infected, the courts would have sustained it.

A similar case arose in Mississippi when the board by a ruling prohibited any person from getting off trains or boats at any point within the State because some cases of yellow fever existed along the coast and cases were suspected to exist at various other places in the State. The court held the regulation void because unreasonable. There was no epidemic calling for so drastic a rule.³⁹ A Louisiana case illustrates the possible extent of quar-

³⁷ *The Lake Erie and Western R. R. Co. vs. James*, 10 Ind. 550.

³⁸ *Hurst vs. Warner*, 102 Mich. 490.

³⁹ *Wilson vs. R. R. Co.*, 77 Miss. 714. Same holding in *Koscuisco vs. Solomon Slowberg*, 68 Miss. 469.

antine regulations. The state board of health had provided for inspection of ships before landing. At the time of an epidemic in New Orleans the board passed a resolution preventing any ship from landing in New Orleans or other places within practically one hundred miles thereabouts. A ship with a clean bill of health protested. The court refused to interfere, and held that "It is the right and duty of the different States to protect and preserve the public health" even though it interferes incidentally with interstate commerce.⁴⁰ The emergency called for drastic action.

5. Regulations Affecting Water Supplies

In this field the regulations are most often limited in their application to a particular stream, pond, or city. From the nature of the problem they could not be practical and be state wide. The law under which the board acts is general in terms and expresses the policy of the State. The regulation of the boards of health apply the general principles laid down by the law.

The state board of Massachusetts made regulations protecting the waters used by the metropolitan water and sewerage board. It was contended that they were in "conflict with the plaintiff's right of property." But the court held that "as a riparian proprietor without other rights, the rules and regulations are binding upon him, and if he has a prescriptive right to pollute water they are still binding and must be enforced."⁴¹ A regulation of the Vermont board prevented bathing in a certain pond which had been used as the source of water supplies for over twenty years. The riparian owners claimed it was a violation of personal liberty. The court held the delegation of power proper, and added that the measure must in a reasonable degree tend to accomplish the result sought but refused to consider the wisdom or expediency of the regulation. "Every reasonable presumption

⁴⁰ *Compagnie Francaise De Navigation vs. State Board of Health*, 25 So. Rep. 591.

⁴¹ *Sprague vs. Dorr*, 185 Mass. 10.

and intendment is indulged with reference to each element essential to their constitutionality."⁴²

The metropolitan water and sewerage board of Massachusetts acting under the legislative grant of exclusive right to regulate ponds and reservoirs used as a source of water supply and to keep persons from going on such waters, passed a rule making it necessary to secure a license to boat on a pond used for water supply. In contesting, the defendant attempted to show that the regulation was unnecessary. The court refused to consider that question and held that the power to regulate included the power to permit people to go on to the water subject to reasonable regulations. "The legislature determined, as it has a right to determine, whether it should exercise the power to exclude the public from the waters."⁴³ But if a state board is given the power to regulate the use of waters to prevent pollution, it can not make the securing of a license from some other board a requisite for going on to the ponds to cut ice. A board cannot delegate its powers.

The situation is the same when a regulation affects a municipality. The state board of Vermont ordered the village of St. Johnsbury to cease using a certain water supply for domestic purposes, but allowed the village to use the water for other purposes. The court held that the State had retained the full right of "governing and regulating the internal police of the State" and this embraces "such reasonable rules and regulations established directly by legislative enactment as will protect the public health and safety, and the State may invest local and state boards, created for administrative purposes, with authority in some proper way to safeguard the public health and safety, the method of accomplishing the results being within the discretion of the State, provided the powers of the general government are not infringed nor any constitutional provisions of the State or of the United States." The court refused to inquire into the wisdom of the legislative plan of carrying out its ends.

⁴² State vs. Morse, 80 Atl. Rep. 189.

⁴³ Sprague vs. Minon, 195 Mass. 581.

⁴⁴ Commonwealth vs. Staples, 191 Mass. 384.

It matters not though the regulations cause inconvenience, provided the means have a just relation to the protection of health.⁴⁵ A state board may legally be given the power to prevent the dumping of sewage into a stream, or to demand the sewage be purified "in a manner satisfactory" to itself before it can be discharged into a stream.⁴⁶

The right of notice and hearing was demanded by one affected by regulations of the Massachusetts board to protect waters. The court, however, regarded the general rules and regulations to be quasi-legislative, and publication as required by the law as sufficient notice.⁴⁷

6. Status of an Entire Code Issued by a Board

The general assembly of Louisiana created a board of health giving it general supervision over quarantine, and the control of contagious and infectious diseases in the State. The board was authorized to issue a "Sanitary Code for the State of Louisiana" which should contain rules and regulations for the improvement of the sanitary and hygienic conditions of the State. The law indicated general fields, and limitations provided that after adoption the code should be printed and distributed to health authorities and the public generally. A violation of the code was made a misdemeanor and the punishment fixed in the law.⁴⁸ The law was challenged on the ground that the legislature could not delegate to the state board of health the power to define what shall constitute a crime, nor delegate legislative power for State purposes, in general, to any subordinate body. The court held that the constitutional provision empowering the legislature to establish a board of health and define its powers made the law valid. "Prescribing its powers" can only mean to delegate to the board of health such powers as may be

⁴⁵ *State Board of Health vs. Village of St. Johnsbury*, 73 Atl. Rep. 58.

⁴⁶ *Miles City vs. State Board of Health*, 39 Mont. 405. *State Board of Health vs. City of Greenville*, 98 N. E. Rep. 1019.

⁴⁷ *Nelson vs. State Board of Health*, 186 Mass. 330.

⁴⁸ Act 192 of 1898; amended by Act 44 of 1900, Act 150 of 1902 and Act 184 of 1904.

deemed necessary for efficiently carrying out the purposes for which a board of health is created, and power most obviously necessary in such a case is that to make health regulations that shall have the force of law." The regulations need not be promulgated as statutes by publication in the official journal. Mere publication is sufficient.⁴⁹

TENDENCIES

The facts do not justify positive conclusions. Practice varies greatly as the following statements indicate. In a number of States where boards have been organized and reorganized within the last decade, the law has gone into considerable detail, leaving few important matters to be governed by board regulations. Minor details are quite generally left to the control of the boards. In Texas and California previous codes of the boards have recently been enacted into law. In Minnesota the opposite has taken place and the laws were repealed with a view to giving to the board the power to make regulations covering health work.⁵⁰ In a number of cases, the state officers are supplementing the laws with extensive regulations. Among these are Indiana and Iowa.

ADVANTAGES AND DISADVANTAGES

It would seem impossible, or if possible, impracticable to specify in detail in the law the work and operation of health authorities. In many departments of government there is a tendency to delegate quasi-legislative power to expert administrative boards. No legislature is able to understand the minute details of the work of every department, or to make general regulations which will apply to every specific case, or to anticipate emergencies which are inevitable. And so it would seem sound to suggest that legislation could well be general, outlining the field in a broad way, leaving the details to experts. There seems little danger in this with the courts holding the check. If it were possible to include all the details in the statutes, it would

⁴⁹ *State vs. Snyder*, 59 So. Rep. 44, La. Superior Court, 1912.

⁵⁰ *Public Health Bulletin*, no. 54, p. 44.

be unwise to do so. It is a very much more difficult matter to amend the law when conditions change than for the health officers to amend the code. New discoveries, and new scientific methods often make such changes necessary to efficient sanitary work. At the same time it is a well known fact that the average legislature is far from being abreast of the times in such matters, and is quite generally willing to postpone action. From every point of view it seems advisable to confer considerable power to make regulations to the boards.

CONCLUSIONS

On the basis of the action of the courts certain principles may be formulated which must be observed by the boards in the exercise of their quasi-legislative function.

1. Regulations must not be contrary to the laws or constitution.
2. Boards can issue regulations only when power is specifically granted by law or is necessarily implied from powers granted. Courts have been liberal in this regard, allowing regulations for transportation of dead bodies, and those requiring tuberculin test for cattle, under the general power to make regulations to protect from contagious diseases.
3. Courts are more liberal in interpreting powers exercised during emergencies than under ordinary circumstances.
4. Regulations in all cases must be reasonable. The question of reasonableness is a judicial one.
5. Regulations must bear a relation to the end in view. However moderate a regulation may be, if it does not bear a direct relation to health, it is invalid.
6. Personal and property rights must give way to general good, and may be affected by regulations if made under authorization of law.
7. A board cannot prescribe a punishment in a regulation. Penalties can be fixed by law only.
8. Publication of regulations is sufficient notice to those affected. If a method of publication is prescribed by law it must be followed. The formalities of publication of statutes is not necessarily required in case of health regulations.

LEGISLATIVE NOTES AND REVIEWS

JOHN A. LAPP

Director of the Bureau of Legislative Information of Indiana

Economy and Efficiency Commissions. Thirteen economy and efficiency commissions submitted recommendations to the 1915 legislatures in as many States. Three of these were auditing committees and had little to suggest requiring legislative action.¹ In three States—Illinois, Iowa and Pennsylvania—general surveys were made and valuable reports upon the organization and operation of state government filed; but legislation upon the recommendations made is still in the future. Minnesota created a legislative commission to check up the work of the former which was chosen by the governor. The Minnesota legislature did, however, provide funds so that the governor can collect budget estimates. Upon the recommendations of the New Jersey commissions the legislature of that State passed five consolidation measures, reorganized one department and directed that monthly conferences be held between the various engineering bureaus of the State. The Nebraska legislature adopted practically all of the rules proposed for the conduct of its own business and directed the governor to assemble budget estimates.

Four of the thirteen commissions had been established on a permanent basis. One of these, the New York department of efficiency and economy was promptly abolished by the legislature. The Wisconsin board of public affairs was reorganized and allowed to continue through 1917. The accounting division of this board prepared a very complete book of budget estimates and provided the clerical force for the joint finance committee during the session. The Ohio budget commissioner has apparently been adopted as part of the legislative machinery. He has been represented at the hearings of the finance committee and the finance bills have been regularly drafted in his office. The Massachusetts commission on economy and efficiency has devoted itself to special investigations for the governor and the general court.

In six States new economy and efficiency commissions were created and directed to make general surveys of the state government. These

¹ Louisiana, Mississippi and South Dakota.

States are, Alabama, Colorado, Connecticut, Kansas, Minnesota and Missouri. The Connecticut commission on the consolidation of state commissions and the reorganization of the public health laws, reported back to the same session and secured the passage of an act establishing a state department of labor and factory inspection. The others report to the next session.

Eight States provided machinery for collecting budget estimates. In five of these the estimates are to be assembled by existing officials. In Minnesota and Nebraska by the governor, in Nevada by the state board of examiners, in Washington by the state board of finance, and in West Virginia by the chief inspector of public offices. The North Dakota budget board and the Vermont committee on budget are organized on the same plan as the Wisconsin board of public affairs, the chairman of the finance committees, one or two other legislators and three or four of the chief financial officers of the State. The Connecticut state board of finance consists of three members appointed by the governor, with the treasurer, comptroller and tax commissioner, *ex officio*. This board not only collects the estimates, it is directed to sit with and become a part of the joint finance committee during the session. The appointed members serve for six years with overlapping terms. This experiment of Connecticut appears to fit in with the scheme of government in an American State with less disturbance than most of the schemes that have been suggested for collecting and formulating a state budget.

C. C. WATERS.

Providence, R. I.

Recent Tendencies in Charter-Making. During the last half-year the number of cities which have exchanged their worn charters for new has been relatively small. Does this municipal tranquillity mean that less emphasis will henceforth be laid upon the type of charter and more upon the need for an enlightened electorate which will not forget the responsibility of office-holders to it? Or is it merely that we are within sight of the decline of an abnormal enthusiasm for charter revision? The latter might be the expected consequence from the rush towards commission government, were it not that few cities which have tried that form have changed back to the mayor and council type, although attempts in several municipalities have been made without success. Two cities in Massachusetts, however, have abandoned commission government, but in both cases the plan had been

adopted to meet some peculiar need. In Salem commission government, with its recall proviso, was originally selected in the hope of taking municipal affairs out of the hands of an undesirable but tenacious administration. The scheme having served its purpose, Plan B of the Massachusetts optional charter law was adopted in November. In the case of Chelsea the commission form of government was arranged for, after the city's devastating fire in 1907, through the appointment by the governor of the State of five commissioners for a period of six years. At the expiration of that time the city resumed its normal government.

Two cities which have recently tried, and failed, to give up commission government are Biddeford, Me., and Jacksonville, Ill. In both it was proposed to return to the aldermanic form of administration and in both the movement was defeated by substantial majorities.

Commission government pure and simple has gained a few converts during the last half-year and, in combination with the city-manager plan, has thriven well. About as many cities have rejected the commission form, however, as have adopted it, and such action has not been confined to any particular section of the country: The plan has been lately accepted in Bridgeport, Conn., Cape May, N. J., St. Marys, Kans., Alpena, Mich., and Springfield, Mo.; it was defeated in Bangor, Me., Frankfort, Ky., Lenoir City, Tenn., Chippewa, Wis., Knoxville, Ia., and Billings, Mont. On the other hand, the following cities have adopted the city-manager plan of government: Watertown, N. Y. (Plan C of the optional charter law), Portsmouth, Va., Elizabeth, N. C., Albion, Mich., Webster City, Ia., San Antonio, Tex., and Santa Barbara and San José, Cal.

Although the number of new charters, other than the above-mentioned, has been small, yet there are a good many points of interest to be found—in the adopted charters, in the proposed charters, and in the rejections. In several large cities charter commissions have been at work for some time, with results varying in their stages of completion. The draft of a charter for Newark, N. J., has been finished and awaits approval by the legislature. It provides for six elective officers only, with four year terms, that is, a mayor and council of five, of which the president is selected as such. Voting is by preferential ballot. The salary of the mayor is \$10,000, of the councilmen \$3500 each, with \$4000 for the president. Wide executive powers are given to the mayor—he appoints and removes the directors of departments and is responsible for the conduct of their departments.

He is a member of the sinking fund commission and in the board of estimate he is entitled to three votes. This latter board, composed of the mayor, the director of finance and president of the council (with two votes each), and the other four councilors (with one vote each), prepares the budget and determines upon the amount to be raised by taxation. To the council belong all other legislative functions, including those formerly looked after by the various municipal boards, and the duties of an excise board. A city purchasing agent is also provided. In a word, the council's legislation (subject to veto by the mayor and repassing by that body) is to be carried out by the mayor's appointees, whom he may remove at any time.

In the city of Los Angeles a new charter, drafted by a board of freeholders, will be submitted to the voters in June, 1916. Here, where the city had overwhelmingly outgrown the provisions made twenty-five years ago, the chief emphasis has been laid upon unity and efficiency. To this end the functions of government, which have been diffused into forty individual branches, are to be administered by twelve departments, with uniform provisions applying to each. The number of commissions has been reduced by ten. The "business" departments of the city are in charge, each, of a single director who is appointed by the mayor and confirmed by the council. Each of the "humanitarian" departments, on the other hand, is placed under a commission of five citizens who receive no compensation. Elective officials include the mayor, a council of nine, the city controller, the city attorney, the city prosecutor, the judges of the municipal courts, and a board of education composed of seven members, all with four-year terms and subject to recall. In addition, there are three boards: an advisory board composed of the mayor, directors of all departments, and presidents of all commissions; a committee of estimates made up of the mayor, controller, and president of the council, which prepares the budget subject to the approval of the mayor and council; and an excise board of five which is composed entirely of the mayor's appointees. The mayor also appoints, under civil service rules, an efficiency chief and the city clerk. Provision is made here, also, for a central purchasing agency. Salaries have been moderately increased in the charter-draft, that of the mayor to \$7500, controller and attorney \$5000 each, prosecutor \$4000, and council members \$3000 each. Special attention has been paid to removing all obstacles to the consolidation of city with county offices. With the charter will be submitted four alternative propositions for sepa-

rate voting. These provide for: (1) the creation of a business manager of departments; (2) a two-year term for elective officers, instead of four; (3) district representation in the council; and (4) election of the council under arrangements for proportional representation.

In this latter connection it might be mentioned that at its recent election the city of Ashtabula, Ohio, used the Hare system of proportional representation for the election of its city council. This is said to be the first application of the scheme in American municipal elections. In Ashtabula seven councilmen were chosen by use of first, second, third and other choice votes, involving the elimination of low candidates on successive counts. By this means it is claimed that representation is given to any faction in the city which can muster one-seventh of the voting strength. The election resulted in, the choice of five Republicans, one Democrat, and one Socialist, who represented, racially, one Italian, one Swede, and five natural-born Americans, and, in nature of religion, two Catholics and five Protestants. The choice of a city manager is in the hands of the council.

Another California city which proposed to amend its charter was Oakland, where for four years the council-commission plan, with five commissioners, had administered the city departments. In response to a feeling of dissatisfaction with the lack of central control and single responsibility, fifteen amendments were drafted by the Tax Association of Alameda County intended to simplify the form of government, to promote business efficiency by providing expert administrative service under the control of a city manager immediately responsible to the council, and to insure through its budget provisions complete publicity for all financial transactions. It is endeavored to make a sharp distinction between the legislative and the administrative: the former is elective, unsalaried, subject to recall, and determines *policies* only; the latter is appointed, on grounds of expertness and fitness, and conducts the *business* of the city. The amendments provide for an unsalaried council of six members and a mayor, to perform legislative functions, the mayor to act simply as ceremonial head and presiding officer of the city. Executive powers are in the hands of a city manager, appointed and directed by the city council. His qualifications seem to be desired along the line of a successful administrator and director, rather than an engineer. Next to the city-manager scheme, the most important amendment concerns budget-making. The city manager prepares the budget and the council adopts it. In order to insure full publicity of all financial matters,

the budget must be printed in pamphlet form for distribution to taxpayers before it is discussed by the council. The school committee is appointed by the mayor instead of elected, as formerly, and its business affairs may be placed in charge of the city manager if so desired. Civil service rules are more rigid and are made to apply to all positions save the city manager and his secretary, and the city attorney and his assistants.

It is interesting to note that two new municipalities in States which have provided optional charter laws, White Plains, N. Y., and Leominster, Mass., have adopted charters which do not correspond exactly to any of the types recommended by the State for adoption. In White Plains a mayor and a board of six councilors are elected at large; the mayor to receive a salary of \$1000 and the councilmen \$300 each. These elective officers serve as a board of directors for the city and appoint three commissioners—of public works, finance, and public safety—who hold office at the will of the council and select their own subordinates. The Leominster city charter provides for the election, for two years, of a mayor and council of nine, elected, one from each of the five wards, and four at large. Appointment of all heads of departments and members of boards, with the exception of the school committee, the city clerk, and the city solicitor, is in the hands of the mayor, subject to confirmation by the council. The mayor may also remove such persons, with the approval of a majority of the council. The school committee is composed of the mayor and six elected members; the city clerk is appointed by the council, and the city solicitor by the mayor without confirmation. The administrative departments of the city are fourteen in number. Party designations at elections and party primaries are abolished. Provision is made for the initiative and referendum; the percentage of required signatures for petitions being the same as that stipulated in the optional law. No mention is made of a veto power for the mayor, although he may attend council meetings and express his opinions. This charter differs from Plan B of the optional charter law mainly in the smaller charter and in the lack of veto power allowed the mayor.

Two cities in Massachusetts, Cambridge and Salem (as beforementioned) voted in November to substitute Plan B for their existing charters. Plan B, briefly, is known as the "divided authority" type and provides for a mayor and city council of not more than fifteen members, one elected from each ward and the remainder at large.

To the mayor is given power of appointment, removal, and veto, subject to the approval of the city council. The plan was defeated for adoption at the November election in Taunton.

Another city which is working upon charter revision is Hartford, Conn. The project here presents the novel feature of committee administration for the departments of fire, police, streets, health and charities, parks and water—the committees in each case to be composed of two members of the board of aldermen and one person appointed by the mayor. Other administrative officers are appointed, for a period of three years, by the mayor also, with the advice and consent of the aldermen. The latter boards consists of twelve members, who, with the mayor, are elected for three-year terms. Nomination for office is by petition and party designations are abolished. Any appointive official may be removed for cause by the mayor with the advice and consent of the any four aldermen. A purchasing agent is also provided.

The Chamber of Commerce of Norfolk, Va., has taken action toward charter revision, and its charter commission has reported the result of a year's investigation for a simplified businesslike form of government. It is the opinion of this body that commission government represents a distinct advance over the old type of city government, and yet is lacking in administrative unity and harmony because of the division in executive power and in expertness in the heads of departments. The city-manager plan is consequently recommended as possessing all the good points of the commission form and removing its defects by carrying out the principle of "election for policy and appointment for efficiency." Furthermore, the chamber's commission doubts the usefulness of civil service as applied to the concentration of power and responsibility in the hands of a city manager, and does not favor its extension beyond the fire and police departments. In Richmond, Va., also a new charter is being drawn up and the draft will be presented for some action before long. In this connection it is worth noticing that the part played by chambers of commerce in instigating and procuring charter revisions is steadily increasing. This has been particularly true in the case of city-manager-plan charters, and, in point of fact, most if not all of the earliest adoptions of this scheme were directly proposed by chambers of commerce.

While the city-manager plan is still in the experimental state, it

is steadily gaining new adherents from those who are content to trust to a principle excellent in theory even though as yet too briefly tried for sure determination of results. Nevertheless a few statistics relating to its adoption may be of interest. Thus far about forty cities have adopted the scheme either through a special charter or by means of an optional state law, while a few over twenty others have made special provisions by ordinance for a city manager. About ten of these cities, however, have not yet put the plan into actual operation. Optional state laws which contain this type of charter have been passed in four States—Ohio, Virginia, Iowa, and Massachusetts. Of these sixty-odd city-manager cities only two, Dayton, Ohio, and San Antonio, Tex., have more than 100,000 population, and three others, Springfield, Ohio, Wheeling, W. Va., and San Diego, Cal., have more than 40,000; while in nearly forty the population is less than 10,000. Twenty-three states are represented in the list, from all sections of the country; the four States which have the largest showing are Michigan with eight cities, Texas seven, California six, and Ohio five. Only one New England State appears in the list—Massachusetts, where the town of Norwood has a business manager by a special provision; New York State has three cities and Pennsylvania one; there are no other strictly eastern states. The plan has found a good deal of favor in the south. In general the concrete advantages which the régime of a city manager brings to a municipality seem to be along the line of better administration of city finances. This is shown in their systems of accounting and purchasing, and in their budgets. It is a feature of most city-manager charters to intrust to the city manager the formulation of the budget estimates. In Dayton an up-to-date form of segregated budget has been adopted, and the city of Jackson, Mich., also shows improvement in this respect. The management of public works departments is another bright spot in city-manager administration, due largely to the fact that in most cities the city manager is an engineer by profession. All things considered, thus far most of the cities which have this form of administration, have not shown very striking improvements; the cities of Springfield and Jackson, however, have made considerable headway; and Dayton has achieved first-class progress.

Alice M. Holden.

*Bureau of Research in Municipal Government,
Harvard University.*

Constitutional Amendments and Referred Measures. Although 1915 was an off year for elections, in the nine States which held elections a total of forty constitutional amendments and legislative measures appeared on the ballots and were acted upon by the voters at the polls. As compared with the 1914 election when two hundred eighty-six such proposals found their way on the ballots in thirty-one States and forty-two per cent were adopted, this year only thirteen of the forty or thirty-two per cent were successful. This year's elections were confined with the exception of California to States in the northern half of the section east of the Mississippi River. Thirty-five of the measures were straight constitutional amendments referred by the legislatures including a new constitution in New York containing some one hundred thirty-three changes to the present basic laws which was submitted to the voters in three sections and all rejected. Four legislative acts, two in Ohio, and two in California were referred by petition and defeated, and a proposition for a \$27,000,000 Canal Bond Issue won in New York State. Only two of the States holding elections, Ohio and California, have the initiative and no measures appeared in this way.

Preëminently among the issue stands out the defeated new constitution in New York which was framed by a constitutional convention in session four months during the summer of 1915. New York voted at a special election in the spring of 1914 in accordance with a constitutional provision that the question whether or not a convention shall be held, shall be submitted to the voters every twenty years, to hold a convention, and delegates to the convention were elected at the November election. The most important features of the new constitution were the proposals for a short ballot, in state administration, a limited form of home rule for cities, the establishment of a budget system, the power granted to the conservation commission and other matters of minor detail.

New York City was opposed to the constitution because complete home rule was not granted and because it did not change the old provision for the city's representation in the legislature. Under this provision New York county could not have more than one-third of the whole representation in the senate and New York City not more than one-half. Radicals were opposed to the constitution because it did not go far enough, making no provision for the initiative, referendum and recall, minimum wage, old age pensions and other social legislation.

Labor organizations aligned against the basic law change because it considered the short ballot and executive budget proposals tending toward bureaucracy; because judges would be selected not elected; and because in the bill of rights there was no provision definitely declaring that no citizen should be subject to military courts while civil courts are open. The labor party stood for a separate submission of each proposition so voters could make their own selections or this not being conceded then labor's policy was to vote everything down. Teachers were against it because they believed that the home rule provision giving the city authorities complete control of the schools would place their pensions, salary schedules and tenure of office in jeopardy. Others viewed it with distrust as a patch work of the controlling political party with the result that the new constitution embracing much that was good met defeat.

More attention was given the problem of taxation than any other one subject, five States presenting some changes in their present system to the voters. Massachusetts adopted a classified tax on incomes. Maryland and Kentucky gave their general assemblies power to classify property for the purpose of taxation. The Kentucky amendment in addition exempts from taxation bonds of the State and of counties, municipalities, and taxing and school districts and also provides that laws passed pursuant to this subject be referred to the vote of the people if they so desire. An amendment prepared by the Illinois special tax commission of 1911 somewhat similar to the Maryland measure except that it provides for the classification of personal property only, while the Maryland amendment classified personal and real property, now awaits the decision of the Illinois voters. In New York the defeat of the new constitution killed an attempt to abolish indiscriminate and permanent exemptions from taxation and to equalize and harmonize assessments. An amendment giving the California legislature authority to classify property for taxation and also one exempting buildings used for church and social purposes from taxation failed. California voters also refused to deposit the State's public moneys in banks and allow the legislature by a two-thirds vote subject to a referendum or to the will of the people through the initiative, to provide conditions therefor. The legislature of New York State was not given power to reduce the rate of taxation so that no surplus would be piled up in case any rate of taxation previously fixed would if continued provide more than sufficient to pay the interest on the debt and the principle

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at maturity. Philadelphia now has a borrowing capacity of ten per cent instead of seven for financing permanent improvements and the city's sinking fund limit is extended to fifty years. Ohio will not exempt bonds of the State or any sub-division issued after 1916 from taxation.

The extension of suffrage to women was turned down at the polls in New York, Massachusetts, Pennsylvania and New Jersey with a majority against in New York of 188,313,² in Massachusetts of 133,447, in Pennsylvania of 55,686, and in New Jersey of 51,108. The New York constitutional convention did not take up the suffrage question because of the amendment already pending. South Dakota, Iowa and West Virginia will vote on the suffrage question in 1916.

The voters of Ohio registered a majority of 55,408 in favor of continuing the sale and manufacture of intoxicating liquor and furthermore declined to regulate the traffic therein as provided for in an act referred by petition.

Four States had something to say on the all-absorbing topic of the initiative and referendum. Maryland was added to the list of States using the referendum in certain cases on laws passed by the general assembly. In the form presented the referendum can be invoked only on petition of 10,000 voters. It would seem that there would have to be widespread opposition to an act of the legislature to win so large a number of signatures against it. Nevertheless, it is a check upon the legislature and can be used when there is a real need for it and may serve as a restraint of the legislature in considering measures against which it might be invoked. Both Ohio and New Jersey failed to limit the initiative and referendum, the former State by limiting the elections on twice defeated constitutional proposals and otherwise prevent its abuse, the latter by permitting the initiations of a constitutional amendment in any year but providing that a matter once defeated cannot be brought up again for five years. Another proviso of the proposed New Jersey law required that every amendment should be voted on separately in direct contrast to the system in New York State where one hundred thirty-three provisions of the new constitution were submitted in three questions. In this case if a voter disapproved of a single proposed change in each of the three questions, in order to register his disapproval he was compelled to reject the other one hundred thirty changes many of which he may have heartily approved. An amendment in California providing

² Exclusive of Oneida County where returns are in litigation.

that no law creating a bonded indebtedness shall be enacted by initiative by electors without the assent of two-thirds of the qualified electors voting thereon, and authorizing the legislature to protect the initiative and referendum petitions from fraud and misrepresentation was rejected. This year California rejected every proposal. In 1914 a huge ballot containing forty-eight proposals was given to the voter and of this number he selected twenty-seven for approval and defeated twenty-one.

A non-partisan government law was referred by petition and defeated in California providing that all offices should be non-partisan except United States senator, representatives in congress, congressional party committeemen, delegates to national party conventions and presidential electors and another defeated referendum measure dealt with the form of the ballot.

The several counties of Maryland and the City of Baltimore were authorized to create charter boards to prepare and submit charters for home rule to the voters of their sub-division for adoption or rejection. California failed to amend her county charter law to provide for election, appointment and tenure of all county officers, number of justices, constables and officers of inferior courts, qualification of all such officers if appointed and creation of additional boards, duties and officers.

The question of what to do with criminals came up in Kentucky and Maryland. In response the voters authorized Kentucky to employ her convicts on the highways of the State and gave the general assembly of Maryland power to enact laws for the suspension of sentence by the court, for any form of indeterminate sentence in criminal cases and for the release upon parole of convicts imprisoned for crime in whatever manner it may see fit.

Social legislation for the laborer was not omitted. The Pennsylvania workmen's compensation law is now compulsory with the employer instead of optional. The general court of Massachusetts at the next session will begin to provide for taking over land in country districts for the purpose of establishing homesteads for those who may wish to escape from the more congested quarters of the city. California voters defeated a measure that would improve her present rural credit system and Pennsylvania voted to incorporate the Torrens system of recording titles in real estate transfers.

Two States failed to pass amendments providing for excess condemnation of property. New Jersey proposed to allow the State, counties, and municipalities to condemn for public improvements

more property than is needed and sell what is not used under restrictions that would require development along certain lines to insure the continued value and character of the improvement made. The California measure was very similar but also would permit the county or municipality to condemn lands within ten miles beyond its boundaries for certain public purposes with the consent of the other county or municipality if such lands lie within it.

Neither Ohio nor New York will have a new congressional apportionment on the basis of the last Federal enumeration, the referendum having been adverse. Ohio did not extend the terms of county officers to four years and California voted down the amendment making the term of office of the superior judges twelve years and also declaring them subject to recall, impeachment and removal proceedings. It was also proposed and defeated in California that when the term of office of a judge of the supreme court, district court of appeal or superior court expires on the first Monday in January following the election, the person appointed by the governor to fill the vacancy should hold for the remainder of the unexpired term for which such judge was elected or appointed.

In Connecticut an amendment increasing the pay of legislators by paying their railway transportation will apparently be ratified by popular vote when all the towns have voted. All except nine of the one hundred sixty-eight towns in the State voted October 4, 1915. Hartford, Bridgeport, New Britain and Ansonia did not have a fall election and are yet to vote. Returns from about one hundred forty of the one hundred fifty-nine towns that voted October 4, show a total of 13,993 for the amendment and 8432 against it.

A tabular presentation of the results of the year's constitution making by popular vote follows:

SUBJECT OF AMENDMENT	STATE	VOTE	
		For	Against
Taxation, finance, etc.....	N. Y. (in new constitution).....	346,922	924,571
Taxation, finance, etc.....	Mass. (classified Income Tax).....	269,871	97,856
Taxations, finance, etc.....	Ky. (classification).....	67,449	35,467
Taxation, finance, etc.....	Md. (classification).....	49,918	26,722
Taxation, finance, etc.....	Cal. (classification).....	42,158	205,597
Taxation, finance, etc.....	Cal. (exempting property).....	94,460	168,171
Public money.....	Cal. Deposit of Public Moneys.....	92,981	151,845
Bonds.....	N. Y. \$27,000,000 Canal Bond Issue.....	625,159	580,242
Bonds.....	N. Y. Altering rate of interest on state debts....	430,423	725,784
Bonds.....	Pa. Enlarging Phila's borrowing capacity.....	381,188	191,004
Bonds.....	Ohio Exempting bonds from taxation.....	337,124	401,083

SUBJECT OF AMENDMENT	STATE	VOTE	
		For	Against
Suffrage.....	N. Y.....	553,348	748,332
Suffrage.....	N. J.....	133,282	184,390
Suffrage.....	Pa.....	385,348	441,034
Suffrage.....	Mass.....	162,492	295,939
Prohibition.....	Ohio.....	484,969	540,377
Regulating Liquor Traffic.....	Ohio.....	242,671	355,207
I., R. and R.....	Md. Referendum.....	51,880	24,659
I., R. and R.....	N. J. Limiting Initiative.....	137,092	162,108
I., R. and R.....	Ohio Limiting I. and R.....	417,384	482,275
I., R. and R.....	Cal. Limiting I. and R.....	121,210	127,160
Elections, charters.....	Cal. Non-partisan government law.....	112,681	156,967
Elections, charters.....	Cal. Form of ballot law.....	106,377	151,167
Elections, charters.....	Md. Charter boards (home rule).....	50,436	25,160
Elections, charters.....	Cal. County charters (home rule).....	85,571	152,697
Criminals.....	Ky. Convict labor.....	81,739	37,855
Criminals.....	Md. Parole, indeterminate sentence and suspension of sentence.....	49,338	25,886
Workmens' Compensation.....	Pa.....	487,135	174,168
Homestead Act.....	Mass.....	284,508	95,148
Excess condemnation of property.....	Cal.....	92,048	155,786
Excess condemnation of property.....	N. J.....	125,206	173,755
Torrens Act.....	Pa.....	353,686	178,567
Rural credits.....	Cal.....	124,247	132,320
New Congressional Apportionment Act.....	Ohio.....	271,987	329,095
New Congressional Apportionment Act.....	N. Y. (new constitution).....	361,270	874,690
Terms of officers.....	Ohio 4 years for county officers.....	207,435	604,463
Terms of officers.....	Cal. Superior judges.....	47,229	213,067
Terms of officers.....	Cal. Term of judges filling vacancies.....	124,610	125,124
Pay of legislators.....	Conn.....	Carried	
Constitution.....	N. Y. New constitution.....	388,966	893,635

ARTHUR CONNORS.

*Bureau of Legislative Information,
Indianapolis, Ind.*

Legislative Reference. The legislative sessions of 1914 and 1915 resulted in few radical changes in the general policy of legislative reference work. Four new legislative reference libraries were authorized by statute—in Arizona,³ New Jersey,⁴ North Carolina,⁵ and Virginia;⁶ and in New York, an act of 1915⁷ created a separate legislative library under the control of the legislature which is however not intended to do legislative reference work. The Library of Congress has, for the last two years, been granted a specific appropriation of \$25,000 a year for legislative reference work for the members of Congress.⁸

In reviewing briefly the new state laws cited above, it is taken for granted that it is unnecessary to dwell on the accepted and familiar details of legislative reference work, the aim being to emphasize the points less generally embodied in the laws on the subject and to bring out any new phases introduced by recent legislation.

The Arizona law establishes a state library under a board of three curators appointed by the governor with the advice and consent of the senate, to serve for six years, a new member appointed biennially. The curators select a librarian with the title "law and legislative reference librarian," at a salary of \$2400 a year. The legislative reference bureau which the library is authorized to establish and maintain, constitutes the predominating feature of the library and the duties of the librarian as outlined are largely those of the average legislative reference librarian with specific duties as to,—the maintenance of a loose-leaf file of the statutes; digests of court decisions; compilations of the statutes in whole, or in part at the request of a head of a state department; formulation of plans for the arrangement and printing of the session laws; preparation of consolidations and revisions of laws for submission to the legislature; and bill drafting for the governor, heads of departments and members of the legislature. The library fund consists of the fees collected and paid into the state treasury by the clerk of the supreme court.

In New Jersey, \$1000 was appropriated to the state library, in both 1914 and 1915, to be expended for legislative reference work in the

³ Laws, Reg. Ses., 1915, p. 134.

⁴ Laws, 1914, p. 43, 44.

⁵ Laws, 1915, p. 247.

⁶ Laws, 1914, p. 313.

⁷ Laws, 1915, p. 1447.

⁸ Acts, 63d Congress, sess. 2, ch. 141, 1914, p. 463; sess. 3, ch. 141, 1915, p. 1005.

library. A separate statute of 1914 created the office of "legislative adviser and bill examiner," at a salary of \$1500, the incumbent to work in conjunction with the legislative reference department of the state library. Both appointment and power of removal are vested in the attorney-general but only a counselor at law is eligible to the office. The duties of the legislative adviser and bill examiner include: bill drafting, examination of bills, amendments, etc., to avoid repetition and unconstitutional provisions and to insure accuracy, clearness and consistency with existing statutes, and advice as to constitutionality, consistency or effect of proposed legislation.

The newly created legislative library of New York State is to be established and controlled by joint rules of the senate and house. The librarian and his two assistants are selected by the president of the senate and the speaker of the house, to serve until their successors are chosen in like manner. All the books, papers, records and documents of the previously existing senate and assembly libraries with all their equipment are transferred to the legislative library and it is presumably to the preservation and custody of this material that the duties of the new library are to be directed rather than to legislative reference work in the accepted meaning of the term. During any vacancy in the office of librarian, the assistant longest in service as a legislative employe, serves as librarian and receives his salary which is \$3600 a year. Assistants receive \$6 per day. The library is to be open the entire year.

The preamble to the North Carolina act authorizing the state historical commission to establish a legislative reference library, calls attention to the fact that thirty-four states have already demonstrated the usefulness and economy of such work. The librarian is appointed by the historical commission and his services are open to county and city officials as well as members of the general assembly and state offices on all questions of state, county and municipal legislation. One of his specified duties is to keep up to date the revision of the statutes of 1909. The annual appropriation for the library is \$5000. The North Carolina historical commission, created by an earlier statute, consists of not more than five members appointed by the governor as their various terms expire and each serving a period of six years.

In Virginia, the governor appoints the director of the legislative reference bureau, with the approval of the senate, to hold his office for five years unless the governor removes him for cause. The director

must be a graduate of a school of law of some college or university approved by the governor, have been a student of political science for at least twelve months and have had experience in bill drafting. The appointment must be made solely on the grounds of fitness for the office without reference to party affiliations. The director is enjoined from practicing law or engaging in any other occupation. He employs his assistants, selecting them for their fitness for the work, and fixes their compensation. Access to both law and state libraries is accorded the staff of the new bureau and the state librarian is authorized to assign any of the employes of the state library to the bureau during the session. The program of work outlined includes the usual assembling of a library, reference work and bill drafting for the governor and members of the legislature, all requests for the drafting of bills to be submitted in writing. During the session, the presiding officer of the two houses may determine what extra hours the bureau shall be kept open. \$5000 is the total annual appropriation and the salary of the director is fixed at \$2500.

In Pennsylvania,⁹ the legislative reference department was authorized to continue its work of codifying the laws, with an appropriation of \$10,000 for the work.

A provision attached to the Nebraska appropriation act of 1915,¹⁰ prohibits the Nebraska legislative reference bureau from drafting any bill or resolution except on the written request of a member or a committee.

A partial revision of the Vermont law¹¹ changes the two revisors of statutes to legislative draftsmen, appointed by the president of the senate and the speaker of the house, the chief justice of the supreme court to have the deciding vote in case of a disagreement. In place of the provision of 1912 that no bill could be acted upon by either house unless endorsed by the revisors of statutes, the legislative draftsmen assist in bill drafting only on request and perform for the legislature the duties of a committee on revision of bills only when by joint rules the legislature does not provide that such committee be otherwise constituted. The draftsmen meet for work during the legislature and the thirty days prior to the session and whenever called upon by the president of the senate and the speaker of the house. The draftsmen are authorized to employ, at the expense of the state,

⁹ Laws, 1915, p. 475.

¹⁰ Laws, 1915, p. 630.

¹¹ Laws, 1915, p. 74.

necessary clerical and stenographic assistance subject to the approval of the president of the senate and speaker of the house.

The submission of proposed initiative measures to the legislative reference department was made possible in Ohio by an act of 1914,¹² on the petition of ten electors. In California¹³ a similar provision requires 25 signatures before the proponents of initiative legislation may submit their measures to the scrutiny of the legislative counsel bureau.

In the message of the governors delivered to the various state legislatures in 1915, Governor Hunt of Arizona recommended the creation of a bureau of municipal research; Governor Miller of Delaware expressed the desire that his State follow the example of New Jersey and appoint a bill examiner; Governor Dunne of Illinois in discussing the Illinois bureau created in 1913, dwelt particularly on the importance of its preparation of the budget; and Governor Byrne of South Dakota commended the work accomplished by the legislative reference department of the department of history. On the other hand, Governor Philipp of Wisconsin urged the abolition of the legislative reference library and an attempt, which proved a fiasco, was made by the legislature of 1915 to abolish the library along with similar attempts against the tax commission and the board of public affairs.

A small document from Massachusetts of interest in this connection is the report made to the governor and the board of trustees of the state library by the committee which recently visited Madison, Wis., to examine the Wisconsin legislative reference bureau and bill drafting department. For several years there has been contention in Massachusetts as to the advisability of establishing a legislative reference department in the state library and a bill drafting department for the use of the legislature. This report discusses the Wisconsin bureau with Massachusetts conditions in mind and includes in its recommendations the employment of a legislative reference librarian to act as assistant state librarian and the establishment of a bill drafting department under the direct control of the legislature. Nothing was accomplished, however, to put these recommendations into effect.

ETHEL CLELAND.

Indiana Bureau of Legislative Information.

¹² Laws, 1914, p. 120.

¹³ Laws, 1915, p. 50.

Absent Voting. There has been rapid spread during the last four years of the idea of giving absent electors a chance to vote by mail. Prior to 1913 only one State—Kansas—had adopted the method. During the sessions of 1913 the States of Minnesota, Missouri, Nebraska and North Dakota passed laws to permit absent voters to vote by mail. In 1915 Colorado, Iowa, Michigan, Montana, Vermont, Wisconsin and Wyoming passed similar acts. The electors in California in 1914 rejected an absent voters' act by a vote of 244,855 in favor and 390,337 against, while Michigan voters adopted a constitutional amendment permitting absent voting by certain classes by a vote of 190,510 for to 175,948 against.

In the States of Iowa, Michigan, Wisconsin, North Dakota, Nebraska, Montana, Minnesota the absent voting provisions apply to primaries as well as elections. There has been quite general expansion of the idea of registration by mail and many states now provide a method for doing so. Thus, it is possible in several states to register, and vote at the primaries and at the general election without appearing in person.

The Colorado law provides that the voters must appear at the polls in the precinct where he happens to be and there present his certificate of registration and be identified by one or more resident voters in the precinct. He must make an affidavit stating his qualifications to vote and that he is unable to vote in his home precinct. The vote of any such person is sealed in an envelope and forwarded to the election officials in the county in which the elector resides. The votes are kept separate until the canvassing boards meet when they are added to the tally sheet.

In Iowa the voters may make application to the auditor of his county or the clerk of the city or town by mail not more than fifteen days nor less than three days or may appear in person not more than ten days nor less than one day before the election stating that he will be unavoidably absent from the county on the day of election and that he desires to vote. Upon receipt of the application, the auditor or clerk mails a ballot to the elector. The voter must sign an affidavit and mark his ballot in the presence of the person taking the oath, fold the same and securely seal it in the presence of such officer and mail it by registered mail to the officer from whom the ballot was obtained. The ballots so received are delivered to the judges of election on election day and if found to be correct, the ballot is counted with the other ballots.

The legislature of Michigan in 1915 carried the constitutional pro-

vision into effect by a law which gives the right to vote by mail to electors in the military service in the State or Nation in time of war, insurrection or rebellion; members of the legislature in session; students and commercial travelers. Such an absent voter must make application to the township, village or city clerk requesting a ballot in a manner similar to that in Iowa. The clerk mails or delivers a ballot to the elector with directions. He must make an affidavit and deposit the ballot in the mails addressed to the clerk from whom he received it. The clerk holds the ballot until election day and delivers it to the election officials who deposit it in the ballot box after satisfying themselves that it is a valid vote.

The Montana act provides that an absent elector may make application to the county clerk at least thirty days before an election and the clerk shall furnish to such elector a ballot. The elector makes an affidavit and encloses the ballot in an envelope in the presence of the officer taking the oath and mails the same to the clerk. The ballot is delivered by the clerk to the election judges. Considerable detail is added in this act to prevent fraud.

The Vermont law provides that any legal voter may vote for state officers, United States senators and electors in the state in which he resides, if he files with the clerk of the town in which he desires to vote a certificate from the town of his legal residence stating that he is on the check list of voters in said town.

The Wisconsin law is very similar to the laws described above, requiring that the elector make application to the clerk of his own county for an official ballot. The clerk issues a ballot to such elector and the elector makes an oath of his qualifications and marks the ballot, places it in an envelope and seals the envelope in the presence of the officer taking the oath and mails the same by registered mail to the officer issuing the ballot. This ballot is delivered to the election officers and is deposited the same as though the elector were present.

The Wyoming law gives a person a right to vote in the place where he may be present on election day. The elector must first obtain a certificate showing that he is registered in his own precinct and make a sworn application to the registration agent or county clerk asking for a certificate showing that he is entitled to vote. With this certificate the voter goes to the polls in the place where he may be on election day and casts his ballot in the manner similar to that in Colorado. The election officials send such vote to the clerk of the county in which the voter resides where it is canvassed the same as in Colorado.

Presidential Primaries. A comprehensive review of the history of the presidential primary was published by Prof. Francis W. Dickey in *THE AMERICAN POLITICAL SCIENCE REVIEW* for August, 1915. The importance of the subject at this time when delegates are being elected to the national party conventions warrants a treatment of the details of the various laws.

Twenty-three States now have either the presidential preference primary or the election of delegates to national conventions by direct vote. To indicate the importance of the primary at this time, the following table is submitted giving the States and the number of delegates from each who will either be chosen by direct primary or who will be morally bound by the preference vote for president.

California.....	26	New York.....	90
Illinois.....	58	North Dakota.....	10
Indiana.....	30	North Carolina.....	24
Iowa.....	26	Ohio.....	48
Massachusetts.....	36	Oregon.....	10
Maryland.....	16	Pennsylvania.....	76
Michigan.....	30	South Dakota.....	10
Minnesota.....	24	Texas ¹	40
Montana.....	8	Vermont ²	8
Nebraska.....	16	West Virginia.....	16
New Jersey.....	28	Wisconsin.....	26
New Hampshire.....	8		

In all a total of 664 delegates out of approximately 1080³ will be subject to direct primaries.

The following States have a presidential preference vote by which the name of the president will be placed upon the ballot for the expression of the will of the voters: Illinois, Indiana, Iowa, Massachusetts, Maryland, Michigan, Minnesota, Montana, Nebraska, New Jersey, North Carolina, North Dakota, Oregon, Ohio, Pennsylvania, Texas, Vermont, West Virginia and Wisconsin.

The following States have a preference vote for vice-president: Indiana, Iowa, Massachusetts, Minnesota, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oregon, Texas and Wisconsin.

Six States elect national party committeemen by direct primary, namely: Iowa, Nebraska, North Dakota, South Dakota, Oregon and Michigan.

¹ Primary optimal with parties casting less than 50,000 votes.

² Referendum in March determines whether the law takes effect this year.

³ On basis of representation in 1912.

Delegates to the national conventions are elected by direct vote in the following States: California, Iowa, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New Hampshire, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Texas, West Virginia and Wisconsin. Illinois elects delegates at large but not district delegates. Indiana, Maryland, Michigan, North Carolina and Vermont do not elect delegates at the primaries. The States of Iowa, Massachusetts, Minnesota, Montana, Nebraska, North Dakota, New Jersey, New Hampshire, New York, Ohio, Oregon, Pennsylvania, Texas, Wisconsin and West Virginia elect four delegates at large and the remainder by congressional districts.

The dates of holding the primary in various States in 1916 are as follows:

California.....	May 2	New York.....	April 4
Illinois.....	April 11	North Carolina.....	June 3
Indiana.....	March 7	North Dakota.....	March 21
Iowa.....	April 10	Ohio.....	April 25
Massachusetts.....	April 25	Oregon.....	April 21
Maryland.....	May 1	Pennsylvania.....	May 16
Michigan.....	April 3	South Dakota.....	June 6
Minnesota.....	March 14	Texas.....	May 23
Montana.....	April 21	Vermont.....	May 16
Nebraska.....	April 18	West Virginia.....	June 6
New Jersey.....	May 23	Wisconsin.....	April 4
New Hampshire.....	March 14		

Seven States provide for absent voting at the primaries, namely: Iowa, Michigan, Minnesota, Montana, Nebraska, North Dakota and Wisconsin.

Candidates for president get their names on the ballot in each State by filing a petition with the secretary of state. The petitions are signed as follows: In Illinois by 1000 to 2000 electors; Indiana 500 or more; Massachusetts 250 to be drawn from at least four counties; Michigan 100 signers; Minnesota 2 per cent of the total vote at the last election but not exceeding 500 signers; Montana 2 per cent of the party vote not exceeding 100 signers in each of one-tenth of the precincts in each of seven counties; Nebraska 25 electors or by the candidate himself; New Jersey at least 1000 signers; North Dakota 1 per cent of the party vote at the last election or at least 500 party voters; Ohio 2 per cent of the electors of the party at the last election; Oregon 1000 party supporters; Pennsylvania 100 electors taken from 10 counties; South Dakota 1 per cent and not more than 3 per cent of the party voters;

Texas 25 signers or upon request of the candidate himself; Vermont 500 signers; Wisconsin 1 per cent of the voters in at least each of six counties and in the aggregate not more than 10 per cent of the total vote of the party; the candidate may get on the ballot without petition by filing a statement of candidacy in Iowa, Maryland, Nebraska, North Carolina, Texas and West Virginia. A fee is required to be paid in Maryland and Oregon. The Indiana law had a provision for a fee but the supreme court has declared the provision void. Candidates for delegates in all other States must file their candidacy either with a petition or without. The provisions relating to the filing of the names for president apply also to the candidate for vice-president in States in which the vice-president is voted for.

One of the most important matters connected with presidential primaries is the attempt to make the action of the voter binding upon the delegates who come to the convention. California gives the opportunity as delegates to declare their preference for nominees for president. The statement reads as follows:

"I personally prefer _____ as nominee of my political party for President of the United States and hereby declare to the voters of my party in the State of California that if elected as delegate to their National Party Convention, I shall, to the best of my judgment and ability support said _____ as nominee of my party for President of the United States."

Candidates for delegates may go on the ballot under heading "No Preference."

Candidates for delegates at large in Illinois may have the name of the candidate for whom they have expressed preference placed under their name or they may have the words: "No preference."

Delegates in Indiana are instructed to vote as a unit for the candidate nominated "as long as his name shall be before the convention."

In Iowa two questions are placed upon the ballot. The first, whether the sentiment of the State should control the delegates or second, whether the sentiment of the district should control the delegates. The results are intended to be normally binding upon the delegates elected.

The candidates in Massachusetts may sign a pledge to support the candidates of the people's choice.

In Maryland delegates are bound by the will of the convention which elects them to vote as a unit for the popular choice of the State as long as there is a chance of his being nominated. In the scheme of electing

delegates to the state convention which in turn elects the delegates to the national convention in Maryland, it is provided that any county or district may vote for or against an "instructed delegation."

Michigan declares the candidate receiving the largest number of votes as the choice of the political party of the State.

Delegates in Minnesota file with their petition a statement that they will be to best of their judgment and ability faithfully carry out the wishes and preferences of the voters of their party. Delegates in Montana make a similar statement.

In Nebraska the delegates are expected to follow the will of the people and the secretary of state is required to grant certificates of election to national delegates on which shall show the number of votes received by each candidate for president and vice-president.

Candidates for delegates in New Jersey may have the name of their presidential favorite placed opposite their name or candidates may group themselves and have the name of the candidate placed opposite the group.

In New Hampshire, delegates may make a statement pledging themselves to vote for certain candidates for president.

The North Carolina law declares that all delegates shall be bound by the majority of the votes or in case there is no majority, then of the plurality of votes.

Delegates in North Dakota take an oath faithfully to carry out the wish of their political party as expressed by the voters.

Candidates for delegates in Ohio are required to file a statement of their first and second choice for nomination for president and no petition may be filed without this statement.

In Oregon, the delegates make a written statement that to the best of their efforts, they will bring about the nomination of those persons for president and vice-president who receive the largest number of votes at the primary.

Delegates in Pennsylvania have three choices: they may promise to support the popular choice of the party in the State or in the district or they may declare that they do not promise to support any particular persons.

The South Dakota law requires that the candidate for president be endorsed by the party and the endorsement shall have the effect of pledging the delegates to support the candidate.

The Texas law states that the candidates receiving the largest number of votes shall be considered the first choice of the delegates.

Vermont requires that the vote for candidates of his party be certified to the delegates.

West Virginia requires that the candidate for delegate shall file a statement as to whether or not he will support the popular choice of such primary for president.

In Wisconsin the nomination papers of any delegate may contain a statement of the principles and candidates favored.

Legislative Organization and Procedure. The wide-spread criticisms of state legislatures as well as constructive proposals of reform have, as a rule, been centered upon the form and functions of those bodies. The more intimate matters of internal organization and procedure have been neglected. Two States—Massachusetts and Nebraska—have within recent time caused to be made careful studies of their respective legislatures along the latter lines with a view to internal reform.

The Massachusetts general court at its session in 1915 received the report of a recess committee suggesting improved methods in the preparation and presentation of and procedure upon bills to the end of shortening sessions, reducing expenses and improving the quality of the legislative product. Suggestions were also called for of means of reducing the number of special and local acts passed at each session.

The report which was made after a very full investigation into the procedure in other States and conferences with legislators, officials and citizens is of interest not only for the facts brought out and the recommendations made, but also for its rejection of various devices which have met with wide acceptance elsewhere. An immediate cause of the investigation is set forth in tables showing the length of session, number of measures introduced and measures passed at each session since 1880. In but one year since 1890 has the annual session lasted less than 150 days. The number of bills has increased from 648 in 1880 to 879 in 1890; 1734 in 1900; 2240 in 1910; and 3459 in 1914. In like manner the total of acts and resolutions passed has risen from 330 in 1880 to 956 in 1914.

The first part of the report is devoted to suggestions for expediting and improving the quality of the work of the legislature. General preliminary consideration is given to the question of limited sessions and of biennial elections and sessions. To limit the length of sessions it was believed would but aggravate the evil of hasty legislation but while making no formal recommendation thereon, the committee endorses the proposal for biennial elections and sessions.

Proceeding to more detailed matters of procedure, various means of limiting the initiation of measures, which in Massachusetts is always by petition, are taken up. Suggestions that a measure which is in substantial conformity with one rejected at the preceding session be not acted on; that the number of measures to be sponsored by any member be limited; that a fee be required upon filing a petition for legislation; and that some sort of preliminary censorship analogous to that imposed upon private bills in England, are one by one considered and rejected as unduly restricting the right of petition or are passed on to the legislature without recommendation. The only recommendation under this head is that all petitions, i.e., proposed bills, be filed with the clerks three weeks before the opening of the session to be by them printed and referred to committees prior to the opening of the session so that the present delay of three or four weeks now spent in the session upon the introduction of measures might be avoided.

This suggestion bears also directly upon the second general consideration—that of expediting the work after its introduction since by this the first reading by title and reference by the chair would be dispensed with. The repeal of the rule requiring the reading of reports of committees is recommended since printed copies are provided. Since in thirty-four States a roll call is required on the final passage of every measure and in twelve states any two members may procure a roll call, the Massachusetts requirement of a demand by one-fifth of those present in the senate and by thirty members in the house is as far as it is deemed wise to go in this direction in the interests of expedition. Time in committee work is already so economized through the system of joint standing committees of which there are thirty, that only minor changes in committee organization are suggested. It is, however, proposed that a roll call of attendance at committee meetings be kept and published weekly and provision made for removal of delinquent members from committees.

Procedure at hearings should be standardized in the interests of economy of time and for the convenience of parties. The practice of requiring committees to report on every matter referred to them which Massachusetts shares with twenty-four other States is found to be an unjustifiable consumer of time. In 1914, 1431 matters were reported back adversely by unanimous vote of committee and the injection of these matters into the calendar served no purpose other than to give proponents an opportunity to talk on measures doomed to defeat. It is proposed to permit committees to withhold report of any measure upon unanimous vote.

Turning to the improvement of the quality of the legislative output the committee finds an index of its defective character in the fact that in each of the last five volumes of Massachusetts reports from thirty to fifty cases involve actual interpretations of statutes, and in the further fact that the general laws of 1914, for example, worked no less than sixty-six changes in its own acts and 317 in those of the four previous sessions.

In considering the remedies for "ill-considered and poorly-drafted" laws the work of legislative reference libraries is commended but the union of such bureaus with bill-drafting offices is opposed. Says the committee: "We do not believe in organizing another department for the use of anybody who desires every sort of a fool bill drafted. . . . If a man desires legislation, let him present his own petition and draw his own bill." The committee favors the appointment of a non-partisan, permanent "clerk of committees" to whom should be referred all bills for revision or approval before being reported back by committees.

In proceeding, in the second part of its report, to a consideration of the burden imposed on the legislature by the mass of special and local bills, which in 1914 rose to the number of 392 exclusive of appropriations and resolutions of a special or local nature, the committee quotes at length and with evident approbation the section of the Pennsylvania constitution limiting special and local legislation but makes no recommendation thereon. The remedies suggested are: first, that the general laws on a variety of subjects particularly those relating to municipal corporations, private corporations and highways be so broadened as to obviate the necessity of much special legislation; second, that the budget system be introduced as a substitute for the many appropriation acts which in 1914 numbered 121; third, and perhaps to be combined with the foregoing, that a standardization of salaries and provisions under general laws be made so that the number of bills introduced carrying special compensations other than regular salaries, pensions, annuities and other personal payments which in 1914 reached 199 might be materially reduced or eliminated, and, fourth, that no special measure plainly within the field of existing administrative departments should be considered unless it has first been submitted to the appropriate department for action.

A summary of the recommendations of the committee is presented in a series of thirty-eight proposals and their substance is embodied in a series of twenty bills, two resolutions and nine rules suggested for legislative action.

Another investigation on the same subject is that made by a legislative committee in Nebraska for presentation to the last session of the legislature. The recommendations of this committee together with a mass of information not hitherto easily available are published in Bulletin No. 4 of the Nebraska Legislative Reference Bureau. The proposals submitted for immediate adoption are detailed in character and cover five subjects, viz., bills, legislative publications, printing, committees, and employes. Among those offered under the first head are provisions for indicating in amendatory bills what matter is new and what is to be stricken out; the substitution of typewriting and printing for long hand copying of engrossed and enrolled bills; the establishment of a bill-drafting bureau in connection with the legislative reference bureau, which it will be noted is in direct contradiction of the Massachusetts proposal, and in order to check the indiscriminate introduction of bills, that no member shall introduce a measure which he is unwilling to endorse and defend. With respect to committees, it is proposed to reduce the number in the house from 47 with a membership of 486 to 28 with a membership of 238; that measures be taken to secure a more systematic holding of committee meetings, and that a public record be kept of votes taken in committees. The committee's recommendations concerning legislative employes would reduce the number from 168 to 57 thereby reducing this item of expense by two-thirds without impairing the service.

Further recommendations for action at a future time include the substitution of a single-chambered legislature; the adoption of civil service rules for legislative employes; the introduction of a state budget system; and an efficiency survey of the state government with a view to the consolidation of administrative departments.

Indiana University.

FRANK G. BATES.

NEWS AND NOTES

PERSONAL AND BIBLIOGRAPHICAL

EDITED BY CHARLES G. FENWICK

Bryn Mawr College

The REVIEW will be pleased to purchase at one dollar apiece, copies of the following of its issues: vol. III, nos. 1, 2, 3, 4; and vol. VI, nos. 1 and 2.

Prof. Charles A. Beard, of Columbia University, will deliver the Clark Memorial lectures at Amherst College this year. His general subject will be "Economics and Politics."

Prof. Walter Sheldon Tower, of the University of Chicago, gave a series of lectures on Latin America at the University of Wisconsin in December.

President C. R. Van Hise, of the University of Wisconsin, has been appointed by President Wilson a member of the commission to investigate the slides at the Panama Canal.

A short course for business men is planned for the coming spring by the Extension Division of the University of Wisconsin. The object is to bring together business men from all parts of the State for the discussion of problems of credit, marketing, salesmanship and business law.

Prof. Nicholas M. Goldenweiser, of the University of Moscow, delivered a series of lectures on Russia at the University of Wisconsin during the first semester.

Prof. Archibald C. Coolidge, of Harvard University, will give the Barbour-Page lectures at the University of Virginia in February upon questions bearing upon recent European history. The lectures on "The Presidency" by ex-President Taft, who lectured upon this foundation last year, will soon be published by Scribners.

H. A. Toulmin, Jr., author of the volume on *The City Manager* in the National Municipal League Series, will lecture on that subject at the University of Virginia in February.

Courses in commercial law and international law are being given for the first time at the University of Virginia by F. J. Hyde, instructor in the Law School and Lindsay Rogers of the School of Political Science, respectively.

Prof. David P. Barrows, of the University of California, is taking sabbatical leave and plans to spend the time in Europe. His course on the Far East will be given by Prof. Payson J. Treat of Stanford University, who will also conduct a seminar on Foreign Relations.

Mr. John A. Lapp, director of the Indiana Bureau of Legislative Information and non-resident lecturer at Indiana University, gave a course of lectures at that university on "Practical Law-making" during the first semester. During the second semester Mr. Lapp will give a course of lectures on "University Training for Public Service."

The new Harris Hall of Political Science, which is to house the departments of History, Political Science and Economics at Northwestern University was dedicated on December 1, 2 and 3. Papers were read by Prof. A. C. McLaughlin on "History as a Public Utility," by Prof. Richard T. Ely on "The Development of Economics in its Relation to the Problems of Government," by Dr. F. A. Cleveland on "Responsible Leadership: an Essential to Efficient Democracy," by Prof. W. W. Willoughby on "Scientific Method in the Study of Politics," by President Edmund J. James on "The Relation of the Study of Political Science to Government and Citizenship," and by Prof. G. S. Ford on "Historiography in Historical Training."

Prof. N. Dwight Harris, of Northwestern University, has been given leave of absence during the second semester and expects to spend the time in a trip to Japan, China and Korea.

Dr. Edwin M. Borchard, law librarian of the library of Congress, returned early in December from a six months' trip in South America. During the trip he gathered for the library of Congress, principally as gifts from the governments of South America, several thousand valuable

official documents, consisting of more or less complete sets of the official gazettes, statutes, and executive decrees, court reports, annual reports of the various ministries, collections of treaties, and other miscellaneous documents. He also purchased the best legal literature of the South American countries and made the preliminary studies in each country in preparation for the publication of a "Guide to the law and legal literature of Latin-America," which the library hopes to publish in about a year's time. Mr. Borchard also studied in South America on behalf of the Department of Commerce the commercial laws and civil procedure of South America, and the results of his study are soon to be published in a monograph to be issued by the Department of Commerce.

A Digest of Workmen's Compensation Laws in the United States and Territories, with annotations and revised to December, 1915, has been compiled and is for sale (\$2) by the Workmen's Compensation Publicity Bureau.

The National Civil Service Reform League held its thirty-fifth annual meeting at Philadelphia, December 2.

The *Law Magazine and Review* announces that "owing to insuperable difficulties in connection with the circulation of the magazine arising from the war, and to the fact that the editor has received an active service appointment, it has been decided to suspend publication for the period of hostilities."

The fourth annual meeting of the Conference on Legal and Social Philosophy was held at Columbia University, November 26 and 27. The following papers were read: Real and Ideal Forces in Civil Law, by M. R. Cohen; Extra Legal Force in Criminal Law, by E. C. Keedy; Law and Force in International Affairs, by S. P. Orth; The Exercise of Force in the Service of Freedom, by Felix Adler; Force and Violence, by John Dewey; The Sovereignty of the State, by Harold Laski; and The Limits of Effective Legal Action, by Roscoe Pound.

Strenges and Walton have published a collection of documents on naval warfare during the present war, under the title *The Protection of Neutral Rights at Sea*. Prof. W. R. Sheperd furnishes a short introduction.

The September, 1915 issue of *Municipal Research*, published by the Bureau of Municipal Research of New York City, is devoted to a discussion of the "Administration of the Indian Office."

P. S. King and Son, of London, have recently published a valuable volume on *English Public Health Administration*, by B. G. Bannington. An introduction is furnished by Graham Wallas. The same publishers announce a volume on *The Rise of Rail-Power in War and Conquest, 1833-1914*, by Edwin A. Pratt.

The annual meeting of the National Civic Federation was held in Washington, D. C., January 17 and 18 and, among other topics, discussed the legal and moral obligations resting upon foreign-born citizens of the United States, and the present and prospective effects of the war upon immigration to the United States. A plan was presented for the organization of a commission to study the question as to how far it is expedient that the government in this country should undertake private industrial enterprises.

The Chamber of Commerce of the United States is making a campaign in favor of a permanent tariff commission based on an almost unanimous opinion in favor of such an institution obtained through a referendum conducted by the Chamber in 1913.

The Madison, Wis., Board of Commerce has issued a *Recreational Survey*, the first of its kind, dealing in detail, and illustrated by maps, showing the needs and the present and possible facilities of the city for play and recreation for children. The investigation, upon the results of which this *Survey* is based, was under the direction of a committee headed by C. W. Hetherington, professor of physical education at the University of Wisconsin.

The National Municipal League, through the generosity of Hon. Morton Denison Hull of Chicago, has established an annual prize of \$250 to be awarded for the best essay on a subject connected with municipal government. The competition is open to post-graduate students who are, or who have been within a year preceding the date of the competition, registered and resident in any college or university of the United States offering distinct and independent instruction in municipal government.

Any suitable subject may be selected by a competitor provided it be submitted to the Secretary of the League and approved by him at least thirty days before the time set for the close of the competition. But no preliminary approval is required in case selection is made from the following list of suggested subjects:

1. The history of municipal government in the United States during either one of the following periods: (a) from the Revolution to the Civil War; (b) from the Civil War to the present time.
2. The charter and the practical workings of government in any American city having a population of 50,000 or over.
3. The legal problems involved in the home-rule charter, with special reference to the experience of those states in which the system has been in operation.
4. The problem of sewage disposal in American cities.
5. Public utilities' commissions, with special reference to the control of municipal public utilities in any State of the Union.
6. Municipal accounting and budget-making, with special reference to the actual results derived from the use of new and uniform methods.
7. Municipal public health agencies.
8. The development, present extent and actual results of municipal ownership and operation of public utilities in American cities.
9. Nomination methods and election machinery in cities, with special reference to ballot reform.

Further particulars may be obtained by addressing Edmond M. Sait, North American Building, Philadelphia, Pa.

The Council of the National Municipal League has selected "Efficient Billboard Regulation" as the topic for the William H. Baldwin Prize for the year 1916. The competition is open to undergraduate students registered in a regular course in any college or university in the United States offering direct instruction in municipal government. Further particulars may be obtained by addressing Mr. Sait.

The committee to whom was assigned the decision upon the merits of the papers contesting for the prizes offered by Messrs. Hart, Schaffner & Marx, of Chicago, for 1915, has agreed upon the following award:

Class A. 1. The first prize of one thousand dollars to Yetta Scheftel, A.B., Northwestern University, 1906, graduate student in the University of Chicago, for a paper entitled "The Taxation of Land Value: A Study of Certain Discriminatory Taxes on Lands." 2. The second

prize of five hundred dollars to Homer B. Vanderblue, A.B., Northwestern University, 1911, Ph.D., Harvard University, 1915, for a paper entitled "Railroad Valuation." 3. Honorable Mention to Edwin G. Nourse, A.B., Cornell University, 1906, Ph.D., University of Chicago, 1915, for a paper entitled "The Chicago Produce Market."

Class B. 1. The first prize of three hundred dollars to Nathan Fine, undergraduate in the University of Chicago, for a paper entitled "The Business Agent of the Building Trades Unions of Chicago." 2. The second prize of two hundred dollars to Robert L. Wolf, undergraduate in Harvard University, for a paper entitled "Some Aspects of the Theory of Value."

The REVIEW is pleased to publish at the suggestion of Mr. J. I. Wyer, Jr., director of the New York State Library, the following memorandum with reference to the Digest and Index of Legislation.

"From 1890 through 1908 the New York State Library issued its 'Comparative summary and index of state legislation.' Manuscript for 1909-10 was destroyed in the fire of 1911, and the pressure of imperative organization and restoration has prevented the publication of any number since 1908, though considerable work has been done upon the index for each of the last five years. This more urgent work continues and it is now clear that the state library will be unable unaided to bring up the heavy arrears of the "Index to legislation" or to continue it.

There exists a long and useful series of subject bibliographies, both printed and typed, from the Library of Congress; the service from the Public Affairs Information Bureau; the service of the Law Reporting Company; many competent annual reviews of legislation in special fields, such as the National Tax Association in the proceedings of its annual conference, the American Labor Legislation review, the Good Roads year-book, the Bankers encyclopedia; legislative reference departments freely interchange bills and laws; there is a larger number (and with greater resources) of State and city legislative bureaus from which first-hand and prompt information about local legislation may be had and which are publishing an increasing number of bibliographic helps in this field."

Mr. Wyer then asks whether the index is still needed, and, if so, whether the library can count upon definite help either with money or work from other legislative reference bureaus, or college departments of political science.

If with money, the aid would have to take the form of an outright subsidy or a subscription to a certain number of copies.

If with work, it would have to be graduate work and to get useful results college credit would probably have to be given for it. Specifically the work would be the indexing and digesting of the session laws of one's own or other assigned states, on a uniform plan and after prescribed models.

Under date of November 4 the Federal Trade Commission issued an inquiry as to the possible coöperation of American business and professional men in the proposed development of foreign trade. This inquiry was followed by a detailed questionnaire covering various aspects of trade relations. The object of the trade commission is to obtain a broad survey of fact and opinion as a basis for subsequent legislation. The data secured through these inquiries are to be supplemented with material furnished by business concerns having wide experience in exporting and with material obtained by the commission's experts, in the United States and abroad, aided by United States consuls and commercial attachés. The chief subject of the questionnaire is whether combinations or coöperative organizations, solely for export business, among American manufacturers or producers by common selling agencies or by other means are or are not in the public interest; if such combinations are considered in the public interest the inquiry is next whether they should be open to all manufacturers in the United States or only to American-owned concerns with the right to exclude any concerns that are controlled by foreign interests, and whether they should be restricted to trade in non-competing products or cover competing products also. Inquiry is also made as to whether such export organizations would be used to restrain trade in the domestic market, and if so, how this could be prevented. Specific information is requested where the person addressed is in a position to furnish any with respect to foreign cartels, syndicates or combinations engaged in export trade or in the business of buyers, jobbers, or retailers, competitive conditions abroad affecting the export market, concessions to foreign syndicates, discrimination in banking or transportation facilities, etc. There is good reason to hope that sound and effective legislation will result from the adoption of expert opinion both theoretical and practical.

Students of corporation law will be interested in the new volume on *Voting Trusts* by H. A. Cushing (New York, The Macmillan Company,

1915, pp. 226) in which the author discusses in successive chapters the significance of voting trusts, their contents, and the modern law regulating them. With respect to the place of the voting trust in modern business life the author holds that while it is subject to such misuse as is inevitable from the personal elements involved in it, it has not ordinarily been a means of undue concentration and has "come to be recognized both by conservative bankers and by investors as a desirable and effective adjunct of modern finance." The chapter on the law of voting trusts illustrates the divergent views of state courts upon what is public policy with regard to them.

The renewed demand that will be made upon Congress to finance the American farmer, after having financed the capitalist by the Federal Reserve Bank Act, gives a timely value to books upon the subject of rural credits. *Land Credits, a plea for the American farmer*, by Hon. D. T. Morgan, Representative in Congress from Oklahoma (New York, T. Y. Crowell Company, 1915, pp. xvi, 299) is an argument in favor of public or semi-public, non-profit sharing, farm-credit institutions, such as are available to the European farmer, as against the private profit-sharing banks proposed in the three bills which received some measure of official sanction by the 63d Congress. Unfortunately the volume is written in a pleonastic style which makes it difficult for the reader to sift out the substance of the argument presented.

There is much valuable political history in the new *History of Currency in the United States* by A. Barton Hepburn (New York, The Macmillan Company, 1915, pp. xv, 552). The work is based upon *The Contest for Sound Money* published by the author in 1903, but in view of the changes of form and the supplementary material it constitutes a new treatise covering the period from the adoption of the Constitution down to the present time. The defects of the old financial system are set forth in contrast with the reforms introduced by the Federal Reserve Act, while a concluding chapter describes the currency systems of the principle commercial nations and explains the emergency measures adopted by European nations to meet the exigencies of the war of 1914.

A monograph on *Reconstruction in Georgia, Economic, Social, Political, 1865-1872*, by C. Mildred Thompson, which appears as No. 1 of volume 64 of the *Columbia Studies in History, Economics and Public*

Law is a welcome addition to the excellent monographs already published upon that period under the direction of Professor Dunning. The text deals in turn with the economic readjustment and reorganization in 1865-1866 brought about by the transition from slavery to freedom, with the military and political reconstruction during the years 1867-72, and lastly with the economic progress and social changes embodying the permanent effects of the new era. In conclusion the author points out that "the seven years of Georgia history from 1865-72 mark only the beginning of the social and economic transformation that has taken place since the war," while the political results of Reconstruction proved to be the least important of all in the later history of Georgia. Moreover, reconstruction meant "a wider democratization of society," opening up an opportunity to the middle class and making other kinds of wealth than lands and slaves the basis of social prestige, while at the same time the centre of sectional dominance moved from the cotton-belt to the Piedmont region. The study is characterized by a conscientious attempt to be fair in the handling of a delicate subject, and shows throughout a critical handling of a large body of source material.

Some Frontiers of To-morrow by L. W. Lyde (New York, The Macmillan Company, 1915, pp. 120, price \$1.00) is an attempt to discuss, in anticipation of the close of the war, the desirable frontiers in Europe. The author's thesis is that political frontiers should be national, that is, that they should represent the sentiment and consciousness of the people within them, and this is to be judged not so much by race or by language as by common ideals based upon historic associations and economic intercourse; secondly, that where frontiers cannot be national they must be assimilative, that is, in cases where a Power has been unable to assimilate territory conquered in the past, it should not only be forbidden to annex new territory but should be obliged to release its unassimilated populations; thirdly, that frontiers should as far as possible be everywhere anti-defensive, that is, they should be identified with geographic features, such as navigable rivers, which tend to promote peaceful intercourse. The text is illustrated by three maps in which tentative new frontiers are substituted in the west, east and south of Europe for the present boundary line. It is interesting to compare the volume before us with Sir Harry Johnston's *Common Sense in Foreign Policy* which appeared in 1913, though the scope of the latter work is much wider and the political knowledge of the author more profound. It is unfortunate that Mr. Lyde should have been

led to indulge in an abuse of Prussia which casts suspicion upon the scientific value of his statements upon other matters.

A new edition of Mary Putnam-Jacobi's *Common Sense Applied to Woman Suffrage* (New York, G. P. Putnam's Sons, 1915, pp. xiv, 236), prepared in view of the recent Constitutional Convention in New York, makes accessible one of the best volumes in the field of suffragist literature. The edition of 1894 was an enlargement of the author's address before the New York Constitutional Convention of 1894. In an introduction to the present edition by Frances Björkman attention is called to the fact that in 1894 there were less than 3,000,000 women in industry in the United States and only 360,000 in New York State, whereas in 1915 there were 8,000,000 women in industry in the whole country and 800,000 in New York State, so that the body of women who have interests apart from family life is growing greater and greater. It might be added that in the meantime the gradual extension of the police power of the State into the field of social legislation is a recognition that the working classes have interests which need special protection beyond that necessary to the community as a whole.

In a brochure of 132 pages entitled *Belgium and Germany* (Thomas Nelson & Sons, London) is contained a large number of illustrations and photographic reproduction of documents, and other texts from official sources, relating to the invasion of Belgium by the German troops, and of the manner in which war and military occupation has been conducted in that unfortunate country.

The Cry for Justice is an anthology of the literature of social protest, edited by Upton Sinclair (Philadelphia, J. C. Winston Company, 1915, pp. 891, price \$2.00). As the title indicates it is a collection of the writings of philosophers, poets, novelists, and social reformers of all ages. Thomas Hood and Jack London, Richard Wagner and Olive Schreiner, Charles Kingsley and Bernard Shaw, Gilbert Chesterton and Bouck White,—men and women whose political, economic and religious ideals differ so widely are called upon to contribute with the Fathers of the early church to the general voice of protest against the suffering and injustice prevalent in the world. Naturally there must be inconsistencies when one selection is balanced against another, the common bond between them being that of protest, irrespective of the fact that the remedy in the mind of the writer may have been in the

one case simple principles of justice and in the other the economic readjustments of socialism. Protest being the common purpose of the selections the editor has seen fit to represent even the "anarchists and the apostles of insurrection" for whose unchained furies the reader must blame not them but himself for having acquiesced in the existence of conditions which have brought these men to such a pass. There is throughout the volume a tendency to associate vice and injustice with wealth and high station, to make poverty the sole excuse for the soddiness of life in the slums, to suggest that oppression will cease when the present oppressor is overthrown, with here and there an exception as in the quotation from Emerson in which that sane thinker tells us that "the sins of our trade belong to no class, to no individual." In view of the lack of any constructive features in the book it is difficult to understand how the editor can conceive of it as "A Bible of the future, a Gospel of the new hope of the race." It is a voice of protest, and protest is not idle if it arouses indignation which may lead ultimately to reform.

Owing to the fact that the science of sociology deals with phenomena which under a specific aspect form the material of political science there are many portions of the work of the sociologist which are of direct interest to the student of political science. *Outlines of Sociology* by F. W. Blackmar and J. L. Gillin (New York, The Macmillan Company, 1915, pp. 586,) appears as one of the "Social Science Test-Books" and covers the field in a detailed and systematic manner. Part II which deals with "Social Evolution" discusses in Chapter VII the "Origin and Development of the State" and in Chapter VIII the "Theory and Function of the State," while Part IV discusses "Ideals of Government" under the general heading of "Social Ideals." Unquestionably it is of value for the political reformer to know the conclusions of the sociologist, but at the same time there is need of caution in distinguishing between the idealistic proposals of sociology (as, for example, those made on p. 429 of the present work) and the hard necessities of political expediency.

Russian Sociology, by Julius F. Hecker appears as No. 1 of volume 67 of the Columbia University *Studies in History, Economics and Public Law* and, like the volume just noticed, contains several chapters of value to the political scientist. Chapter I reviews in a useful way the social-political background of Russian sociology, while the theories of

the Slavophiles, Russophiles, and the Westernists, presented in Chapters II and III throw much light upon the foreign policy and domestic politics of the country. Part III takes us into the field of Russian adaptations of Marxist sociology, Kropotkin's anarchical sociology, and the juristic theories of Korkunov. A valuable analytical table summing up the results of the study is presented near the end of the volume.

The Sociological Implications of Ricardo's Economics, by C. C. North (University of Chicago Press, pp. 65) is a doctor's dissertation consisting chiefly of an analysis of the text of the *Principles of Political Economy and Taxation*. The conclusion reached by the author is that "the essential error in classical political economy was the assumption that a science of economic activity was possible without an accounting" with the essential correlations of economics with social life as a whole. How far Ricardo was to blame for the sins of the classical school the author considers an open question.

Citizens in Industry by Charles Richmond Henderson (New York, D. Appleton and Company, 1915, pp. xix, 342) appears as one of the "Social Betterment Series," edited by Shailer Mathews and having for its general object to present the steady advance that has been made in correcting evils and establishing laws and institutions for the improvement of social conditions. Dr. Henderson's thesis is that efficiency in the employee is the employer's best asset; that better working conditions, better housing and healthier recreations are all conducive to higher efficiency; that profit sharing and "thrift measures" may act as an economic inducement to efficiency but that they do not "touch the deepest demand of the modern workingman; a share in control of the conditions of labor, of wages, of all that affects his life"—a measure of self-government in the shop and democratic control over industry. The particular bearing of the volume upon political science is that it forecasts the transition from philanthropy and welfare schemes to social legislation.

The Bureau of Foreign and Domestic Commerce of the Department of Commerce has issued in its "Special Agents Series," No. 97, a pamphlet presenting the *Commercial laws of England, Scotland, Germany and France* by Archibald J. Wolfe, commercial agent of the Department of Commerce, in collaboration with Edwin M. Borchard, law librarian of the Library of Congress (Washington, Government

Printing Office, 1915, pp. 127, price \$0.15). The object of the volume is to present to the American merchant and exporter and to the American lawyer certain practical matters of foreign commercial law and legal procedure which may be of service in the conduct of commercial affairs. The subjects dealt with are, among others,—the courts which have jurisdiction in cases of commercial litigation, lawyers, costs and fees, attachment, bankruptcy, agencies, bills and notes, contracts, and laws relating to unfair competition and trusts. An appendix contains a glossary of German and French legal terms.

The Library of Congress has issued the third volume in its series of guides to foreign laws begun in 1912. Following the publication of the *Guide to the Law and Legal Literature of Germany* and the *Bibliography of International and Continental Law*, both of which have been a welcome addition to the working library of the political scientist, there now appears a *Guide to the Law and Legal Literature of Spain*, prepared by Thomas W. Palmer, Jr., under the direction of Edwin M. Borchard, law librarian (Washington, Government Printing Office, 1915, pp. 174, price \$0.50). The arrangement of material follows the plan of the volume on German law, chief stress being laid upon the civil and commercial codes. Of particular interest to the student of political science probably will be the sections dealing with jurisprudence and philosophy of law, legal history, administrative law, and labor legislation, the last-named section dealing with recent Spanish legislation on the subject of workmen's insurance and employers' liability and also industrial courts and arbitration commissions. A glossary of legal terms and a careful index complete the volume.

Among recent monographs in the *Studies in History, Economics and Public Law* published by Columbia University are two which deal with early political history in America. *The Review of American Colonial Legislation by the King in Council* by Elmer B. Russell appears as No. 2 of volume 64. After an introductory chapter devoted to a review of colonial legislation prior to 1696, the author discusses the procedure and policy of the British Government in its review of American legislation and traces the results of that review. *The Sovereign Council of New France* by Raymond DuBois Cahall, which appears as No. 1 of volume 65, covers a phase of the early constitutional history of Canada and places before the reader a scholarly account of the organization,

procedure, functions and achievements of the Council, a body which exercised judicial, administrative, and legislative functions.

In the University of Illinois studies (volume 3, No. 4 and volume 4, No. 1) are two further monographs of interest to students of political history. *Church and State in Massachusetts, 1691-1740*, by Susan M. Reed, treats of the attempts of the Massachusetts hierarchy in 1691 to carry over into the newly created royal provincial government the theocratic ideas which had controlled the colony in its earlier days, and of the ensuing conflict between the hierarchy and the Episcopalians and other dissenters. *The Illinois Whigs before 1846*, by Charles M. Thompson, discusses the Whig party in Illinois in its national and local aspects from its origin in 1834.¹

It might be possible, by means of a referendum, to determine whether France or Germany is nearer to the hearts of the inhabitants of Alsace-Lorraine. In default of some such test, the old controversy will continue to occupy the rival historians. Under the title *Les Affinités françaises de L'Alsace avant Louis XIV* (Paris, Recueil Sirey, 1915, pp. 158), Prof. Jacques Flach of the Collège de France has amplified his essay in the *Revue des Deux Mondes* into a small volume dealing with the historic relations between France and the much-disputed territories from the 9th to the 17th century, and emphasizing the sentimental relationship. The points of resemblance between the two civilizations are stressed,—the Gallic influence as seen in the character of the people, in the poetry of Gotfried of Strassburg, in the architecture of the Strassburg cathedral, in the controversy between Wimpfeling and the Franciscan monk, Thomas Murner, over French ascendancy at the beginning of the 14th century, the influx from France during the latter part of the 16th century, and many particular instances revealing a mutual understanding and sympathy. But after all is said, we come back to the point of greatest present interest, the will of the inhabitants themselves. Renan long ago pointed out that the true basis for a nation, before language or race, is the consent of the people.²

In his study of *La Caste Dominante Allemande* (Paris, Recueil Sirey, 1915, pp. xi, 145) Prof. Maurice Millioud of the University of Lausanne defines Pan-Germanism as a caste doctrine supported by a patriotic

¹ Contributed by J. M. Leake.

² Contributed by F. W. Garrison.

interpretation of history, biology, ethnology and moral philosophy. The southern states surrendered their liberalism in a compromise with Bismarck over national unity. The rapid growth of industry called for an astute balancing of forces. Militarism, the support of the aristocracy, was made to serve capitalist ambitions; even the Socialists became a national party, fighting the capitalists at home, but joining them to check foreign competition. Warlike feelings were encouraged to distract attention from rising prices, and the popular acceptance of Pan-Germanism became a fact fraught with tremendous consequences.

The growth of the military organism in the congenial atmosphere of an inflated nationalism was followed by the inevitable dream of world conquest. It is more difficult to explain why commercial Germany was willing to hazard the shipwreck of her wonderfully successful economic expansion. A reason appears when we study that manifestation of national selfishness which we call commercial warfare. Germany's desire for colonies was stimulated by a hunger for new markets and the need of obtaining raw materials unhampered by hostile tariffs. Her foreign trade had been built up by using surplus products to undersell competitors abroad, and by the acceptance of unprecedentedly long credits, while equilibrium was maintained at home by means of tariffs, rebates, bounties, etc. It is idle to hope that natural economic laws can be circumvented indefinitely, and we are led to ask if the threatened collapse of an artificial financial structure made war necessary to forestall a colossal failure.³

In discussing *Le Droit de la Force et la Force du Droit* (Paris, Recueil Sirey, 1915, pp. 76), Prof. Jacques Flach of the Collège de France declares that humanity must choose between the reign of selfish and brutal force, based on pride of race, and the reign of justice, founded on the love of God and the love of man. Under the first régime the world must be made to bow to the will of the strongest race, while under the second every people would be left free to develop its national life and conscience. It is perhaps only natural that M. Flach should find the two ideals satisfactorily personified by Germany and France respectively. It is the purpose of his essay to show how German leaders of thought have found historical and philosophical justification for the worship of force, returning to the Sophist definition of justice as that which is of advantage to the strongest. With the awakening of nationality towards the end of the eighteenth century arose a con-

³ Contributed by F. W. Garrison.

ception of the German soul as a realization of divinity, an instrument of omnipotence, and the era of Prussification introduced historic fatalism, Darwinism applied to nations, the idea that might creates right, the end justifies the means. Then followed the scientific, cultural phase demanding the spread of German civilization, and finally the dream of a world-wide economic domain to be won by applying the theory that "economic and military forces advance side by side." We have had abundant proof that the passions engendered by war cloud the vision even of scholars and philosophers. Patriotism does not pull evenly when harnessed with a more universal emotion. In order to justify France it is necessary to sanction the use of force in a just cause, a conclusion damaging to the conception of right as a veritable power, however satisfactory it may seem to the popular mind.⁴

It is a fair comment upon our study of constitutional law that we are too apt to accept the decisions of the Supreme Court of the United States as practical issues and to neglect the theory of law according to which they are decided. Moreover, we lose sight of the individuality of the justices of the court and merge them all into a common unit. For this reason students will welcome a recent issue of the Johns Hopkins *Studies in Historical and Political Science* under the title of *The Constitutional Doctrines of Justice Harlan*, by Floyd B. Clark, Ph.D. After a brief introduction sketching the career of Justice Harlan the author discusses in turn some of the difficult questions of constitutional law upon which Justice Harlan held independent views. On the question of the stability of States the author finds in the opinions of Justice Harlan a consistent doctrine that suits against state officers are not to be construed as suits against the State where there is question of a definite act on the part of the state officer, but that they are to be so construed where the general provisions of a statute are at issue, as in the case of *Ex parte Young*. In like manner upon the question of the impairment of the obligation of contracts the author is able to trace a consistent attitude on the part of Justice Harlan in favor of the sacredness of valid contract rights. In cases involving due process of law under the fourteenth amendment Justice Harlan differed from the majority of the court in holding out against the alteration of the traditional jury system and in believing that public office should be considered as a property right. In general the author finds that the criticism that Justice Harlan emphasized too greatly the letter of the law is unfair,

⁴ Contributed by F. W. Garrison.

and that his attitude was rather to throw back upon the legislative body the duty of making laws read as they were meant to be applied. While it is sometimes difficult to follow the reasoning of the author in his attempts to find consistency in the doctrines of Justice Harlan, as, for instance, in his reconciliation of the Justice's dissenting opinion in the *Knight* case with the dissenting opinion in the *Standard Oil* case where the Justice abandons his earlier defense of the rule of reason in the interpretation of the Sherman Act, and again in his justification of the decision in *Ex parte Young*, and while we may be inclined to think that the attitude of Justice Harlan was at times rather belligerent than judicial, yet on the other hand one turns from the volume with the feeling of a more intimate acquaintance with the personality of the supreme court and with a greater sense of respect for the sincerity and legal detachment dominating the members holding that high office.

Students of international law will welcome the edition of *The Hague Conventions and Declarations of 1899 and 1907* published by the Oxford University Press (New York, 1915, pp. xxx, 303) for the Carnegie Endowment for International Peace. While there are already in the field a number of editions of those documents, notably the edition by A. Pearce Higgins (Cambridge, University Press, 1909) with its admirable commentary, there is still room for an authoritative edition at a reasonable price. The French text of the original documents bears the authentication of the Minister of Foreign Affairs at The Hague, while the English translation reproduces the official translation of the Department of State of the United States. The respective conventions are followed by tables of signatures, ratifications, adhesions and reservations, all of which have been verified from the official records. In addition to giving us the latest and most complete record of the action taken by the States in the adoption of the Hague conventions, the present edition goes beyond other editions in giving us the complete texts of the reservations made during the course of the proceedings of the Conferences and hitherto to be found only in the pages of the official *Actes et Documents*. The value of the book is likewise considerably increased by the addition of an index of persons, as well as an index-digest which will make reference to the conventions a far easier task for the layman than it has hitherto been.

Problems of Readjustment after the War (New York: D. Appleton and Company, 1915, pp. 186) is a collection of separate articles by writers who are specialists in their particular subjects. Albert B. Hart con-

tributes a discussion on "The War and Democracy" in which he shows the extent to which popular control of the government in democratic countries has given way under stress of the war to administrative absolutism. Franklin H. Giddings writes on "The Crisis in Social Evolution" and his explanation of the struggle between different civilizations that is going on is accompanied by many suggestive observations, as, for example, whether after the war the democratic governments, while holding to their ideals of personal liberty, might not use to advantage the administrative organs which have so effectively coördinated the economic and military forces of Germany and Austria. The results would be a system "having the energetic, responsible, inventive individual as its force-generating unit, but creating organization and strengthening central control as the need arises." But perhaps the most valuable contribution to the volume is the chapter by W. W. Willoughby on "The Relation of the Individual to the State" in which the war is exhibited as a contest between divergent conceptions of the nature of the state, of its purposes, and of the relation between the state and its subjects. This relation of the individual to the state is viewed in three aspects: first, as connoting the extent to which the welfare of the citizen is bound up with that of the state, and here the author shows the transition from the proprietary conception of sovereignty prevailing in the eighteenth century to the modern conception of the responsibility of the ruler to the state; secondly, as expressing the extent to which the individual controls the form of government of the state, and here we are given an excellent statement of the meaning of constitutional guarantees of private rights and of the evils inherent in a non-popular form of government—"beneath its surface prosperity, German national life contains potentialities of evil which need only time and opportunity to be manifested;" and thirdly, as defining the sphere of governmental action, and here the author suggests one of the lessons of the war will be a recognition of the value of an efficient administrative system and in consequence a probable increase in the control entrusted to it. Other chapters in the volume are "An Economic Interpretation of the War" by E. R. A. Seligman, "The War and International Law," by George G. Wilson, "The War and International Commerce and Finance," by Emory R. Johnson, and "The Conduct of Military and Naval Warfare," by Rear-Admiral C. F. Goodrich.

A new value attaches to the 1914 issue of the *Canadian Annual Review*, edited by Mr. J. Castell Hopkins, and published by the Annual Review Company of Toronto. Long ago the *Review* attained a position

of permanent usefulness. In the fourteen years which have elapsed since it was first published, it has become an indispensable handbook of Canadian public affairs—provincial as well as dominion—easily ranking among British publications of this class with the long-established *Annual Register*. All the older features which give the *Canadian Annual* this position re-appear in the 1914 issue; and the new value which attaches to this issue arises from the thoroughness and comprehensiveness of the history of the part that Canada is taking in the war, and of the effect of the war on political, economic, and social conditions in the Dominion. This history extends from the third of August to the end of 1914. It is written on a generous scale, with ample quotations from speeches and documents; and covers every phase of war activity in Canada from Cape Breton Island to Vancouver and Victoria. In addition to this record of Canada's part in the war—which extends to about 150 pages—there is a detailed history of the part that Newfoundland, Australia, New Zealand and South Africa had taken up to the end of the year; so that from the pages of the *Canadian Annual Review* for 1914, it is possible to follow the actions of all the oversea dominions of Great Britain in the first five months of the war.

The great war now in progress has greatly stimulated the study of the political geography of Europe. Especially welcome, therefore, is the appearance from the Oxford University Press of *An Historical Atlas of Modern Europe from 1789 to 1914*, by C. Grant Robertson and J. G. Bartholomew, which for a price slightly more than a dollar provides a cloth bound series of most excellent charts, thirty-six in number, not overburdened with unimportant names, and of sufficient size— $12\frac{1}{2} \times 9$ inches—to make easily evident the present boundaries of Europe and the historical steps by which these boundaries have been established. In addition there are maps showing orographical, ethnological, and industrial and economic conditions, together with an introductory text giving briefly the significance of the maps which follow. Overstepping the limitations of the title there are also maps of Russia in Asia, Persia, Africa, the Far East, and a world map showing colonial possessions. The press work is excellent.

Prof. James F. Colby has performed a distinct service to students of political and legal science by reprinting in a moderate sized volume, under the title *A Sketch of English Legal History*, by F. W. Maitland and F. C. Montague (New York: G. P. Putnam's Sons, 1915, pp. 229)

the admirable articles contributed by these authors to *Social England* edited by H. D. Traill, and published in 1899. In their ensemble, these articles, supplemented as they are by occasional extracts from other sources, furnish us with a brief history which concerns not only the development of the law but of the judicial institutions of England, in this latter respect being more comprehensive than the *Short History of English Law* by Edward Jenks. To each of the chapters are appended lists of recommended readings upon the topics treated; and in several appendices matter is furnished showing the variety of forms which the English law has assumed at different times. The editor, it is believed, is justified in his statement that "this series of articles now furnishes the best available introduction to English legal history."

Prof. S. P. Orth has compiled a valuable volume of *Readings on the Relation of Government to Property and Industry* (Boston: Ginn and Company, 1915, pp. 664). This is a field where legal, political, and economic principles meet, and, unfortunately, with not a little confusion arising. The courts have sought with varying degrees of earnestness to make the law conform to new conditions, without sacrificing established constitutional principles; the legislatures have sought to establish by statute new principles governing industrial and commercial relations, and to enforce these principles through new agencies; the economists have been readjusting their theories, and the practical precepts which they declare as necessary in order to secure greater industrial efficiency and a nearer approximation to a realization of distributive justice. The entire movement is thus one of great interest as well as complexity, and we cannot therefore but welcome a volume which, like the one prepared by Professor Orth, will be of assistance to the teacher and the student alike, in arriving at a just estimate of the present phases and status of the general problem of the relation of government to property and industry. The selection of material has been made with excellent judgment.

Among the many books which have appeared dealing with the questions of international law and morality involved in the invasion of Belgium by the German armies, none is more satisfactory than *Belgium Neutral and Loyal*, by Emile Maxweiler, Director of the Solmay Institute of Sociology at Brussels (New York: G. P. Purnam's Sons, 1915, pp. 324). The work has been published in French and German, and, we are informed, the reading of it was recommended by *Vorwärts* to all Ger-

man socialists. The work examines carefully and scientifically all the various charges which have from time to time been made of unneutral acts upon the part of Belgium, and shows, to the point of absolute demonstration, the unsubstantial basis for them. Upon the other hand he makes evident and emphasizes the fact, which deserves emphasis, that Germany, in her attempts to keep England out of the war, attempted to bargain away Belgium's liberty while as yet she had made no charge that Belgium had in any way been unfriendly to the Fatherland or acted in a manner inconsistent with her continued neutrality. Furthermore, the author naturally does not fail to comment upon the fact that, although herself asking that Belgium should not offer resistance to invasion of her soil, Germany officially praised Switzerland for announcing that she intended to oppose by force any attempt to violate her territory. "The Imperial Government," it was said, "has taken cognizance of this declaration with sincere satisfaction and is convinced that the Confederation with the support of its strong army and the indomitable will of the entire Swiss people, will repel every attempt to violate its neutrality."

THE TWELFTH ANNUAL MEETING OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION

The twelfth annual meeting of the American Political Association was held at Washington, D. C., Monday, December 27 to Friday, December 31, inclusive.

On Monday evening the attending members of the Association were the guests of the management of the Second Pan American Scientific Congress at a reception in the Pan American Building given to the delegates of the Congress and to the various learned societies in session in Washington.

On Tuesday afternoon a joint meeting was held with the American Historical Association, the American Economic Association, the American Society of International Law and Sections 6 and 9 of the Second Pan American Scientific Congress for the discussion of the preservation of the national archives. In the evening a joint meeting was held with the American Association for Labor Legislation at which the presidential address of Prof. Ernst Freund of the American Political Science Association and Prof. Henry R. Seager of the American Association for Labor Legislation were presented.

On Wednesday, December 29, the morning session was devoted to a

discussion of Standardization and Governmental Efficiency. At this, a joint meeting with the American Statistical Association, the leading papers were presented by Roland P. Falkner, on Standardization and Statistical Presentation; J. Russell Smith, on The Meaning of Standardization and Robert Moses, on Standardization of Grades and Salaries in Civil Service. The afternoon was devoted to a discussion of Administrative Tribunals at which the following papers were presented: Judicial Determinations by Executive Departments by Charles R. Pierce and Judicial Determinations by Administrative Commissions by Charles W. Needham.

The afternoon session was a joint meeting with the American Society for International Law and the American Society for the Judicial Settlement of International Disputes. The leading papers presented were by Prof. Jesse S. Reeves, Criteria of Differentiation between Justiciable and Non-Justiciable Controversies; James Brown Scott, The Nature of the Formal Agreement of Nations to Refer Justiciable Disputes to Judicial Settlement; A. de Lapradelle, A Uniform Law of Neutrality.

On Thursday the morning session was on the subject Improvement in the Technique of Direct Legislation. The program included the following papers: Mr. Judson C. King, Recent Experience with the Operation of the Initiative and Referendum; Mr. W. A. Schnader, Recent Legislation Safeguarding the Petition, and Prof. C. O. Gardner, The Problem of Percentages in Direct Government. In the afternoon two subjects were taken up for round table discussion: (1) Political Scientists and Practical Governmental Work, and (2) The Amending Procedure of the Federal Constitution.

On Friday a joint meeting with the American Historical Association was held in the morning on the subject The Growth of Nationalism in the British Empire. The leading papers on the program were: Growth of Nationalism in the British Empire by Prof. C. M. Wrong and Nationalism in the British Empire by Mr. A. Maurice Low. In the afternoon a session was held on Statute Drafting at which occurred an open discussion based on the report of the special committee on Legislative Drafting presented at the meeting of the American Bar Association held in Salt Lake City, 1915.

Due to the number of meetings of learned societies held in Washington during the period of the sessions social events were more prominent than usual. Besides the reception on Monday evening already referred to, two luncheons were arranged for members of the Associ-

ation and their friends at the Cosmos Club on Wednesday and Thursday. On Wednesday evening a reception was tendered by the Regents and Secretary of the Smithsonian Institute and on Thursday the members of the Association were entertained at a banquet given by the Division of International Law of the Carnegie Endowment for International Peace to the members of the American Political Science Association, the American Society of International Law and the delegates to the Sub-Section on International Law of the Second Pan American Scientific Congress.

A business meeting of the Association was held on Thursday, December 30, at 9.00 a.m. The following officers were elected for the coming year.

President, Jesse Macy, Grinnell College.

First Vice-President, Charles A. Beard, Columbia University.

Second Vice-President, J. W. Garner, University of Illinois.

Third Vice-President, J. Q. Dealey, Brown University.

Secretary-Treasurer, Chester Lloyd Jones, University of Wisconsin.

Members of the Council, E. S. Corwin, Princeton University; Robt. C. Brooks, Swarthmore College; C. A. Dykstra, University of Kansas; George H. Haynes, Worcester Polytechnic Institute; Alpheus H. Snow, Washington, D. C.

SUMMARY FINANCIAL STATEMENT OF AMERICAN POLITICAL SCIENCE ASSOCIATION
FOR THE YEAR ENDING DECEMBER 15, 1915

Receipts

Balance on hand (in Trust Fund 1914).....	\$131.52
Membership dues.....	3956.59
Binding <i>Proceedings</i>	3.20
Life Memberships.....	90.00
Publications.....	169.12
Reprints.....	
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	\$4350.43

Expenditures

Bills paid for 1914.....	\$1131.11
Refunds on overpayment of dues.....	37.00
Clerical Assistance to Secretary-Treasurer.....	397.55
Postage.....	159.61
Williams & Wilkins for REVIEW.....	1905.65
Miscellaneous printing.....	178.30
Legislative Notes.....	50.00
"News and Notes"—August and November.....	7.00

Typewriter.....	\$47.50
Miscellaneous.....	7.44
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	\$3,921.16
Balance on hand.....	429.27
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	\$4,350.43

There are at present 1462 members of the Association of which 47 are life members fully paid.

ABSTRACT OF FINAL REPORT OF COMMITTEE ON INSTRUCTION IN POLITICAL SCIENCE

The Committee on Instruction appointed to investigate and report on the teaching of Government in schools and colleges presented its final report to the Political Science Association at the annual session in Washington. An outline of the contents of the report along with the important recommendations contained therein is presented herewith:

PART I

- I. Stages in the advancement of civic instruction.
- II. Efforts to improve the teaching of civics by such organizations as:
 - (a) National Education Association.
 - (b) American Historical Association.
 - (c) National Municipal League.
 - (d) American Political Science Association.
- III. The purpose of courses of instruction in civic affairs.
- IV. Methods, material, and devices.

PART II

- I. Suggestive material for courses of study in
 - (a) Elementary schools.
 - (b) Junior high schools.
 - (c) Advanced civics in senior high schools.
 - (d) Select bibliographies for teachers.

PART III

- I. Report of secondary school instruction by Committee of Seven and Bureau of Education.
- II. Reports of state committees on the teaching of civics in separate States.
- III. Preparation of teachers—normal schools, colleges, and universities.
- IV. Report on the teaching of political science in colleges and universities.
- V. Appendix with suggestive programs and successful methods for the teaching of civics in the public schools.

A. Recommendations for College Instruction

- I. Establishment of a separate department of Political Science.
- II. Elementary course in American government with explanatory material and suggestive comparisons from foreign governments.
- III. Special provisions for training of teachers of civics as well as for school administrators.
- IV. More emphasis to be given to administrative methods and the enforcement of the law.
- V. Preparation of reports and surveys on actual political conditions.
- VI. Establishment of reference libraries and research laboratories for study and for the purpose of rendering aid to government officials and interested citizens.
- VII. Provisions for professional training for certain branches of the public service.

B. Recommendations for Instruction in Secondary Schools

- I. That a year of social science, exclusive of history, be given in the senior high school, of which at least a half year shall be civics or government, and that 4 or 5 hours per week be given to this subject.
- II. That pressure be brought to bear on colleges to accept a full year of civics for entrance when the work is effectively taught.
- III. Better preparation of teachers. Courses in normal schools, colleges, and universities designed to prepare teachers of government.
- IV. More emphasis on local affairs.
- V. Better material, collection of a civics library with reference works, government reports and pamphlet literature illustrating all phases of government work.
- VI. Instruction to be made more practical. Such devices are particularly recommended as observation of local government departments, surveys of local conditions, and talks to classes by officials and others interested in governmental problems.
- VII. Put civic instruction into civic practice by such devices as self government in school, by organizing classes on the model of government departments, by the formation of civic leagues and community clubs.

The suggestive outlines of courses of study which the committee has prepared are intended to offer material and methods of presentation for some incidental instruction in the elementary school and a full year course for 8th grade or the first year in junior high school, and at least a half year of government for the senior high school. The complete report with these suggestive courses will probably be published and be made available to the members of the Association and others interested.

DECISIONS OF AMERICAN COURTS ON POINTS OF PUBLIC LAW

JOHN T. FITZPATRICK

Law Librarian, New York State Library

Aliens—Right of Employment. *Truax vs. Raich.* (United States, November 1, 1915. 239 U.S. 33.) A statute of Arizona which requires that employers employ only a specified percentage of alien employees is unconstitutional as denying to alien inhabitants the equal protection of the law. An alien admitted to the United States under the federal law, with which law no State has any concern, has not only the privilege of entering and abiding in the United States, but also of entering and abiding in any State, and being an inhabitant of any State entitles him, under the fourteenth amendment, to the equal protection of its laws.

Aliens—Right of Employment on Municipal Work. *Heim vs. McCall.* (United States, November 29, 1915. 239 U.S. 175, affirming 214 N. Y. 629. See also *Crane vs. New York*, 239 U.S. 195, affirming 215 N. Y. 154, 108 N.E. 427.) The provision of the labor law of the State of New York that only citizens of the United States shall be employed on public works and that preference shall be given to citizens of that State, is not unconstitutional under the privilege and immunities clause of the federal constitution or under the equal protection or due process clause of the fourteenth amendment thereto, nor is violative of the treaty of 1871 with Italy. It belongs to the State, as guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit work to be done on its behalf, or on behalf of its municipalities.

Candidates for Office—Promise to Accept Salary in Lieu of Fees. *Galpin vs. City of Chicago.* (Illinois, June 24, 1915. 109 N.E. 713.) The promise of a candidate for office to accept an annual salary and to pay into the county treasury all fees, where the law provides that the officer holding the position for which he is a candidate shall receive fees, is illegal and unenforceable. The fees or salary of an officer, when fixed by law, become an incident to the office and it is contrary to public policy for candidates to attempt to attain such office by promises made to the electors to perform the duties of the office for any other or different compensation than that fixed by law.

Citizenship—Married Women. MacKenzie vs. Hare. (United States, December 6, 1915. 239 U.S. 299.) Although under the constitution of the United States every person born in the United States is a citizen thereof, the marriage of an American woman with a foreigner is tantamount to voluntary expatriation; and the court may without exceeding its powers make it so, since such a marriage may involve international complications. Identity of husband and wife is an ancient principle of our jurisdiction, and is still retained notwithstanding much relaxation thereof; and while it has purpose, if not necessity, in domestic policy, it has greater purpose, and greater necessity in international policy.

Commission Form of Government. State vs. Thompson. (Alabama, June 30, 1915. 69 S. 461). The title of an act which purports to provide for a commission form of municipal government for certain cities contemplates the inclusion of a provision for a board of public safety, consisting of three members elective by the senate, to exercise complete and exclusive authority over the police and fire departments, to fix salaries in, and to provide for the maintenance and expenses of such departments. There is no such well defined definition of the idea and scope of a commission form of government as would exclude the addition of such a board.

Cruel and Unusual Punishments. Fry vs. Commonwealth. (Kentucky, November 11, 1915. 179 S.W. 604). The prescribing for the theft of poultry of the value of \$2.00 or more of imprisonment for not less than one or more than five years is not in violation of the constitutional provision prohibiting the infliction of cruel and unusual punishment. Penal statutes are enacted in an effort to discourage the perpetration of the offenses denounced therein. The punishment that will tend to deter, in respect of one crime, must necessarily differ from that which will deter in respect of another. The legislature is the judge of the adequacy of the penalties necessary to prevent crime.

Delinquent Children—Juvenile Court Proceedings. Childress vs. State. (Tennessee, November 6, 1915. 179 S.W. 643.) Under an act providing for the disposition, care, protection, etc., of delinquent children, a child may be committed to the State reformatory notwithstanding the fact that such child has not been held to answer any charge by presentment or indictment. The provisions of the state constitution

requiring that no person shall be put to answer any criminal charge but by presentment, indictment or impeachment, do not apply. Such proceedings before a juvenile court do not amount to a trial of the child for any criminal offense and the proceedings are entirely distinct from proceedings in courts ordained to try persons for crime. The juvenile court merely undertakes to remove the delinquent child from bad influences and to make such disposition of the child as to eradicate evil propensities by education, wholesome training, and moral instruction.

Employment Agencies—Workmen. Huntworth vs. Tanner. (Washington, November 6, 1915. 152 P. 523.) The purpose of an act which makes it unlawful for any employment agent or agency to receive from any person seeking employment any remuneration or fee, is to protect the ignorant class of manual laborers, composed largely of foreigners unfamiliar with language or conditions; and it will not be held to apply to persons seeking employment in the professions; and hence will not apply to a teachers' agency.

Employment Contract—Labor Unions. Bemis vs. State. (Oklahoma, October 9, 1915. 152 P. 456.) An act which provides a criminal penalty for an employer who prescribes as a condition upon which one may secure employment under, or remain in the service of such employer (the employment being terminable at the will of either party), that the employee shall enter into an agreement not to become or remain a member of any labor organization while so employed, infringes the right of personal liberty and property.

Game, Property in. Graves vs. Dunlap. (Washington, November 5, 1915. 152 P. 532.) The title to game, while animals *ferae naturae*, belongs to the State. But when animals *ferae naturae* are reclaimed by the art and power of man, they are the subject of a qualified right of property, defeasible if they return to their wild state. If reclaimed and kept in inclosed grounds, they are property, and as such will pass to executors and administrators and are the subject of larceny.

Hours of Labor—Constitutionality of Act. Saville vs. Corless. (Utah, July 20, 1915. 151 P. 51.) The title of an act purporting to regulate the hours of employees of mercantile establishments is not indicative of the subject matter of the act which in fact provides for the closing

at six p.m. of all mercantile and commercial houses in cities of over 10,000 population. The act is not a valid exercise of the police power since it affects establishments conducted without employees and in such cases merely fixes a closing hour and is not directed to enterprises affecting the health, morals, safety or general welfare. The act also violates the constitutional right to enjoy, acquire and possess property, the most valuable of which is that of the right to sell.

Hours of Labor—Railroad Employees. Commonwealth vs. Boston and M. R. R. (Massachusetts, November 23, 1915. 110 N.E. 264.) An act which limits the hours of labor of employees in and about steam railroad stations such as baggage men, laborers, and crossing-tenders, infringes the guaranty of the federal constitution of freedom of contract, since it affects employees in railroad stations whose work does not concern the safety of the traveling public, the regulation of whose hours of labor is not legitimately within the police power. Nor can such an act be upheld as an amendment to the charter of the railroad corporation, the act being manifestly not intended as a charter amendment, but as a police regulation amending the labor laws.

Indian Treaties—Abrogation. Loman vs. Paullin. (Oklahoma, September 21, 1915. 152 P. 73.) It is within the power of Congress to abrogate treaties entered into between the United States and a tribe of Indians, though presumably such power will be exercised only where circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should be so. In a contingency, such power may be availed of from considerations of governmental policy, particularly if consistent with perfect good faith toward the Indians.

Indictment—Necessity. Commonwealth vs. Francies. (Pennsylvania, July 3, 1915. 95 A. 527.) Indictment by a grand jury is not essential in a criminal case to due process, within the meaning of the provision of the federal constitution; hence a provision of a statute permitting a person accused of crime to enter a plea of guilty upon the indictment prior to the submission of the indictment to the grand jury, and authorizing the court to accept the plea and impose sentence, is not unconstitutional.

Intoxicating Liquors—Anti-advertising Liquor Law. Advertiser Co. vs. State. (Alabama, June 10, 1915. 69 S. 501.) As the State has authority under its police power to regulate the sale of intoxicants, and as contracts relating to such sales are subject to such power, an act prohibiting newspapers and magazines in the State from advertising for the sale of intoxicants does not work an impairment of contracts, though the publishers already had contracts for the publication of liquor advertisements.

Legislative Committee, Life of. Fergus vs. Russel. (Illinois, November 6, 1915. 110 N.E. 130). As the functions of a legislature cease upon its adjournment sine die, all the powers which have been delegated by it, or either house thereof, to a committee, by mere resolution, also cease, as the only powers which can be conferred upon such committees are such powers as are possessed by the house or houses making the appointment. The long indulgence of a legislature and each house thereof in the custom of appointing, by joint or separate resolutions, committees to act after final adjournment, can create no right in the legislature or either house to do so. However, the legislature may, by an act regularly passed, create a commission for any proper purpose and vest it with power to perform its duties after the legislature has finally adjourned.

Monopolies—Constitutionality of Act Legalizing Farm Products Pools. Gay vs. Brent. (Kentucky, November 23, 1915. 179 S.W. 1051.) A statute declaring that it shall be lawful for any number of persons to combine or pool crops of wheat, tobacco, and other farm products raised by them for the purpose of classifying, holding, and disposing of the same, in order to obtain a higher price than they can by selling separately, is in conflict with the fourteenth amendment of the federal constitution; it not being possible when such provision is construed in connection with a provision of the State constitution forbidding combinations to enhance or depreciate values of merchandise and other statutory provisions forbidding combinations in regulation of trade, to determine with reasonable certainty when the price of an article has been enhanced above or depreciated below its real value.

Motor Vehicles—Imputed Negligence. Birmingham-Tuscaloosa Ry. and Utilities Co. vs. Carpenter. (Alabama, June 30, 1915. 69 S. 626.) A provision that the contributory negligence of a person operating a

motor vehicle shall be imputed to every occupant thereof, but not to the passengers paying fare and riding in motor vehicles regularly used for hire, is unconstitutional as discriminating against persons riding in motor vehicles, and denying equal protection of the law to persons similarly situated.

Moving Pictures—Censorship. Buffalo Branch, Mutual Film Corporation vs. Breiter. (Pennsylvania, July 3, 1915. 95 A. 433.) An act which provides for the appointment of a State board of censors with powers to regulate the operation and exhibition of moving picture films is neither violative of the bill of rights of the State constitution nor of the due process of law provision of the federal constitution.

Naturalization—White Persons. Dow vs. United States. (United States, September 14, 1915. 226 Fed. 145.) Notwithstanding the fact that in 1790, when the first naturalization law was passed authorizing the naturalization of "free white persons," the common understanding was that only people of European nativity or descent were white, and that all others were colored, and that legislators had not in definite view any persons as white except those of European nativity or descent, in view of the development of the conception of race division and in view of the legislative discussion upon and the reconsideration and reenactment of the naturalization law, the present statute must be considered to include as white persons all persons of the white or Caucasian race; hence the statute must be construed to include Syrians.

Race Discrimination—Separation of White and Negro Passengers. O'Leary v. Illinois Cent. Ry. Co. (Mississippi, October 25, 1915. 69 S. 713.) A state statute requiring separate accommodations for white and negro passengers on railroad trains applies to intrastate passengers only and has no application to a passenger riding on an interstate train.

Religious Societies—Schisms—Diversion of Church Property. Lindstrom vs. Tell. (Minnesota, November 26, 1915. 154 N.W. 969.) Where a church corporation is formed for the purpose of promoting certain defined doctrines of religious faith which are set forth in its corporate articles, the church property which it acquires is impressed with the trust to carry out that purpose, and a majority of the congregation cannot divert the church property to uses inconsistent with the

religious tenets of the church society against the protest of a minority, however small. In the event of a schism in a church, any church property devoted to the propagation of particular doctrines remains with the organization that remains loyal to those doctrines.

Revenue Bills—House of Origin. Hubbard vs. Lowe. (United States, October 15, 1915. 226 Fed. 135.) A bill, originally passed by the United States senate, which was afterwards amended by the house of representatives by striking out everything after the enacting clause and by substituting a different act, and which was subsequently re-passed by the senate, is a bill originating in the senate. Where an act as it lies engrossed in the office of the secretary of state bears a senate bill number and contains a certificate of the secretary of the senate that it originated in the senate, the courts must accept the statement of the records that the act originated in the senate, and the journal of congress cannot be resorted to. *Held*, that the Cotton Futures Act, prohibiting contracts for cotton futures, having originated in the Senate contrary to the constitutional requirement that bills for raising revenue shall originate in the house of representatives, is not a law.

Signs—Regulation by Municipal Corporation. Haskell vs. Howard. (Illinois, October 27, 1915. 109 N.E. 992.) Municipalities have power to regulate the construction and use of signs within the corporate limits. Such regulation being the exercise of the police power must be reasonable, and must not invade the personal rights or liberties of citizens. A city in anti-saloon territory has no authority to adopt an ordinance prohibiting the display of any sign or advertisement of any wholesale or retail liquor dealer upon any vehicle or building, where the ordinance is not limited to advertisements for the sale of liquor within the municipality, nor for orders for the sale and delivery of liquors in such city, and has no reasonable connection with the power to prohibit the sale of liquor.

States—Liability to Be Sued. State vs. Superior Court. (Washington, August 16, 1915. 151 P. 108.) It is well settled that an action cannot be maintained against a state without its consent, and that the state when it does so consent, can fix the place in which it may be sued, limit the causes for which the suit may be brought, and define the class of persons by whom it can be maintained. The state being sovereign, its power to control and regulate the right of suit against

it is plenary; it may grant the right or refuse it as it chooses, and when it grants it, it may enact such condition thereto as it deems wise.

Statutes—General and Special Laws. State vs. Atchison, T. & S. F. Ry. Co. (New Mexico, July 27, 1915. 151 P. 305.) A general law is one that relates to a subject of a general nature or that affects all the people of the state, or all of a particular class. A special law is one made for individual cases, or for less than a class of persons, or subjects, requiring laws appropriate to peculiar conditions or circumstances. Statutory or constitutional provisions against special legislation do not prevent the legislature from dividing legislation into classes and applying different rules to each. The classification, however, must be based upon substantial distinctions, and not be arbitrary in its nature, and must apply to every member of the class or every subject under similar conditions, embracing all and excluding none whose conditions and circumstances render legislation necessary or appropriate to them as a class. A statute classifying counties numerically, without giving a basis for such classification or making provision for the future admission or exclusion of other counties, is special legislation.

Theatre Licenses—Revocation. Bainbridge vs. City of Minneapolis (Minnesota, November 19, 1915. 154 N.W. 964.) Where the charter of a city gives to the mayor the power to revoke theatre licenses, the power conferred is not an absolute one. It cannot be used capriciously, arbitrarily or oppressively, but only in the exercise of an honest and reasonable discretion. The exercise of the discretion of the mayor, however, cannot be subject to judicial control; the court will merely inquire whether a fair legal discretion was exercised.

Weights and Measures—Act Requiring Sale by Weight or Numerical Count. Ex parte Steube. (Ohio, December 1, 1914. 110 N.E. 250.) An act which requires certain articles therein enumerated to be sold by avoirdupois weight or numerical count, unless under agreement in writing of all contracting parties, is unconstitutional. The act places an unreasonable and burdensome obligation upon persons engaged in lawful business and is an unwarranted exercise of the police power.

Workmen's Compensation—Constitutionality of Act. Mackin vs. Detroit-Timkin Axle Co. (Michigan, June 14, 1915. 153 N.W. 49.)

A workmen's compensation law is not unconstitutional as depriving an employee of the common-law remedy for tort, when such act provides that any employee shall be deemed to have accepted the act, if, at the time of the accident, his employer is subject to its provisions, whether the employee has notice thereof or not, provided such employee at the time of hiring does not give the employer notice in writing that he elects not to be subject to the act. There is no vested right in any common-law remedy for a tort yet to happen, and there is no coercion upon the employee, because he has free choice by giving notice to elect not to go under the act. Nor is such an act unconstitutional in so far as it exempts household servants, farm laborers, and casual employees from its provisions. The classification made is within the legislative power. Nor is the act unconstitutional in so far as it provides that payments thereunder shall not be assignable or subject to attachment or garnishment, as limiting the right of contract.

LIST OF DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

The following list is a continuation of the series of doctoral dissertations published annually in the *Review*. For the year 1914 a list similar to that given below appeared in the August, 1914, number (vol. viii, p. 488). A date where given after the title of the dissertation indicates the probable date of completion.

COLONIES

- G. W. Washburne, A.B., Ohio State, 1907; A.M. Columbia, 1913.* Imperial Control over the Administration of Justice in the American Colonies. *Columbia.*
A. H. Basye, A.B. Kansas, 1904; A.M. 1906. The Office of Secretary of State for America. *Yale.*
J. S. Custer, A.B. William Jewell, 1907; B.A. Oxford, 1910. The Canadian Constitutional Act of 1791. *Wisconsin.*

CONSTITUTIONAL LAW

- H. C. Beyle, A.B. Central College of Iowa, 1912.* Constitutional and Administrative Aspects of Tenement House Legislation. *Chicago.*
M. S. Hirsch, A.B., College of the City of New York, 1911; A.M. Columbia, 1913. Freedom of Speech and of the Press. *Columbia.*
S. D. M. Hudson, Ph.B. Syracuse, 1907. The Power of Congress over Interstate Commerce. *Columbia.*
C. H. Meyers, A.B. Columbia, 1912. Constitutionality of Workmen's Compensation Acts. *Columbia.*
C. Wang-Shia. King and Cabinet in Great Britain. *Columbia.*
B. E. Shultz, A.B. De Pauw, 1909; A.M. Columbia, 1911. Justice McLean and the Dred Scott Decision. *Columbia.*
C. Wittke, A.B. Ohio State, 1913; A.M. Harvard, 1914. The History of Parliamentary Privilege in England. *Harvard.*
F. R. Flournoy, A.B. Washington and Lee, 1905; A.M. Columbia, 1912. The Extent of Parliamentary Control of Foreign Policy in Great Britain. *Columbia.*
Lindsay Rogers, A.B. Johns Hopkins, 1912; Ph.D., 1915. The Postal Power of Congress. Published. *Johns Hopkins.*
W. B. Hunting, A.B. Johns Hopkins, 1909. The Impairment of the Obligation of Contracts. *Johns Hopkins.*

INTERNATIONAL LAW AND DIPLOMACY

- S. F. Bemis, A.B. Clark College, 1912; A.M. Harvard, 1915.* History and Diplomacy of the Jay Treaty. *Harvard.*

E. DeW. Dickinson, A.B. Carleton; A.M. Dartmouth. Equality of States. *Harvard.*

C. R. Hall, A.B. Amherst; A.M. Harvard. The Secretary of State as a Diplomat. *Harvard.*

C. E. Hill, A.B. and A.M. Michigan. The Danish Sound Dues. 1916. *Harvard.*

H. Hurtwitz, A.B. and A.M. Harvard. Change of Sovereignty in International Law. *Harvard.*

C. E. McGuire, A.B. and A.M. Harvard. The Right of Asylum in the Middle Ages. 1915. *Harvard.*

H. F. Munro, A.B. Dalhousie; A.M. Harvard. The Status of Non-sovereign Political Unities. *Harvard.*

E. M. Linton, Ph.D. Indiana, 1915. Belgian Neutrality. 1915. *Indiana.*

T. Wada, A.B. Stanford, 1912; A.M. California, 1913; Ph.D. Iowa, 1915. The Foreign Policy of the United States towards Japan, 1832-1901. Completed. *Iowa.*

H. G. Hodges, Litt.B. Princeton, 1911; A.M. Pennsylvania, 1914. The Diplomatic Relations between the United States and Great Britain, 1893-1897. 1915. *Pennsylvania.*

H. S. Quigley, A.B. Hamline, 1911; A.B. Oxford, 1914. The Immunity of Private Property at Sea in Time of War. 1916. *Wisconsin.*

C. Huth, A.B. Wisconsin, 1904; A.M. 1905. Rights and Customs of Sanctuary in Ancient Greece and Rome. *Columbia.*

W. E. Caldwell, A.B. Cornell, 1910. Development of the Ideas of War and Peace among the Ancient Greeks. *Columbia.*

F. A. Middlebush, A.B. Michigan. Diplomatic Relations between England and Holland, 1678-1688. *Michigan.*

J. V. Fuller, A.B., 1914. The Armed Neutrality. *Harvard.*

C. E. Asnis, A.B. Pennsylvania, 1904; A.M. 1913. The Development of Italy's Position in the Triple Alliance. *Pennsylvania.*

L. H. Davis, S.B. Pennsylvania, 1901, and A.M., 1912. The Doctrine of Spheres of Influence and the Open-Door Policy in China. *Pennsylvania.*

J. W. Carroll, A.B. Columbia, 1914, and A.M. 1915. The Diplomatic Situation in China. *Columbia.*

A. C. Henry, A.B. Franklin and Marshall, 1910; A.M. Pennsylvania, 1915. The Influence of the United States in the Movement for International Arbitration and Peace. *Pennsylvania.*

D. C. Orbison, Litt.B. Princeton, 1912. American Diplomatic Relations with Russia since 1824. *Pennsylvania.*

A. R. Ellingwood, A.B. Colorado College, 1910; B.C.L. Oxford, 1913. Diplomatic Relations between the United States and Great Britain during the Civil War. *Pennsylvania.*

J. B. Lockey, S. B. Peabody, 1902; A.M. Columbia, 1909. Latin America and the Monroe Doctrine. *Columbia.*

Henry Gil, Barrister University of La Plata, 1909; A.M. Pennsylvania, 1911. The Foreign Policy of the Argentine Republic on the American Continent. *Pennsylvania.*

C. W. Sutton, B. S. Washington. The Development Policy of Latin America: its Economic, Political and Social Effects and its Influence upon International Relations. *Columbia.*

O. L. Owens, A.B. Richmond, 1898; A.M. Johns Hopkins, 1913. Early Diplomatic Relations of the United States Involving Questions of Religious Liberty. *Johns Hopkins.*

JURISPRUDENCE AND POLITICAL THEORY

C. C. Davis, S.B. and LLB. Harvard. The Nature of Law. *Harvard.*

W. Herbrouck, A.B. The Law of Unfair Combinations in England and America. 1916. *Michigan.*

J. A. Woolf, Ph.B. Chicago, 1912. Political Theory of Jeremy Bentham. *Chicago.*

E. N. Curtis, A.B. Yale, 1901; A.M. Harvard, 1904. The Influence of American Political Thought on the Second French Republic. *Columbia.*

T. Yokoyama, Ph.B. Kansas City University, 1909. The Japanese Judiciary. *Johns Hopkins.*

LEGISLATION AND ADMINISTRATION

N. H. Debel, A.B. Nebraska, 1913; A.M. 1914. The Veto Power of the Governor in Illinois. *Illinois.*

T. P. Martin, A.B. Leland Stanford; A.M. California. The Confirmation of Foreign Land Titles in the Acquired Territories of the United States. *Harvard.*

W. T. Morgan, Ph.B. Ohio; A.M. Harvard. The Personality of the Federal Judiciary. *Harvard.*

L. A. Rufener, A.B. and A.M. Kansas. The Work of the Massachusetts State Board of Conciliation and Arbitration. 1915. *Harvard.*

L. P. Rice, A.B. Wesleyan; A.M. Harvard. Taxation in Connecticut. *Harvard.*

H. B. Vanderblue, A.B. and A.M. Northwestern. Railroad Valuation. 1915. *Harvard.*

J. E. Briggs, A.B. Morningside, 1913; A.M. Iowa, 1914. Social Legislation in Iowa. Completed. *Iowa.*

P. W. Viesselman, A.M. The Disposal of State Lands in Minnesota. *Minnesota.*

C. H. Crennan, A.B. Indiana, 1913, and A.M. 1914. The American State Executive. 1915. *Pennsylvania.*

J. A. Dunaway, A.B. Park College, 1910, and A.M., 1912. The Administration of Inspection in the Various City Departments of Philadelphia. *Pennsylvania.*

U. G. Dubach, A.B. Indiana, 1908; A.M. Harvard, 1910. State Administration of Health. 1916. *Wisconsin.*

B. A. Arneson, A.B. Wisconsin, 1913, and A.M., 1914. Civil Service in the States. 1916. *Wisconsin.*

J. E. Howe, A.B. Yale, 1913. The Origin and Working of Unicameral Government in New Brunswick. *Yale.*

H. B. Vanderblue, A.B. Northwestern, 1911; A.M., 1912. Railroad Valuation. *Harvard.*

T. C. Liang, A.B. Wisconsin, 1914. United States Department of Labor. *Columbia.*

R. E. Cushman, A.B. Oberlin, 1911. Excess Condemnation. *Columbia.*

D. Q. Clark, A.B. Drury, 1890; A.M. Illinois, 1909. Stein's Principles of Administration. *Illinois.*

S. Kitasawa, A.B. Waseda, 1910; A.M. North Carolina, 1911. History and Growth of National Indebtedness in Japan. *Johns Hopkins.*

G. W. Rutherford, A.B. Missouri, 1913. The Development of Procedure in the National House of Representatives. *Illinois.*

P. H. Keyes, A.B. Barnard, 1912; A.M. Columbia, 1913. Civil Service: the Historical and Technical Development of the Merit System. *Columbia.*

R. H. Tucker, A.B. William and Mary, 1898; A.M. 1897. The Regulation of Express Services and Rates. *Wisconsin.*

J. W. Stehman, A.B. Lebanon Valley College, 1909; A.M. Pennsylvania, 1910. Government Regulation of the Securities of Public Utilities. *Harvard.*

H. Kyrk, Ph.B. Chicago, 1910. Control of Public Utilities. 1916. *Chicago.*

B. Glassberg, A.B. College of the City of New York, 1910; A.M. Columbia, 1914. Federal Labor Legislation of the Twentieth Century. 1917. *Columbia.*

F. E. Clark, A.B. Albion, 1912; A.M. Illinois, 1913. The Growth of Public Indebtedness, National, State and Local, in the United States since 1870. *Illinois.*

J. G. Herndon, A.B. Washington and Lee, 1911. The Wisconsin Tax Law, its Administration and Significance. *Wisconsin.*

J. L. Donaldson, A.B. Maryland Agricultural College, 1910. Present State Administration in Maryland. Completed. *Johns Hopkins.*

M. H. Lauchheimer, A.B. Johns Hopkins, 1913. Labor Legislation and Its Administration in Maryland. *Johns Hopkins.*

LOCAL GOVERNMENT

F. H. Guild, A.B. Brown, 1913; A.M. Indiana, 1915. Special Municipal Corporations. *Illinois.*

W. Anderson, A.B. Minnesota; A.M. Harvard. Municipal Contracts and Contract-letting. 1917. *Harvard.*

E. A. Cottrell, A.B. Swarthmore. The Government of Newport, R. I. 1916. *Harvard.*

G. H. McCaffrey, A.B. and A.M. Harvard. Municipal Police. 1917. *Harvard.*

R. M. Story, A.B. Monmouth; A.M. Harvard. The Office of Mayor in the United States. 1916. *Harvard.*

O. K. Patton, A.B. Iowa, 1912, and A.M. 1913. Home Rule in Iowa. Completed. *Iowa.*

W. Lamkie, Ph.B. Brown, 1905. The Organization of Municipal Employees for Mutual Benefit. *New York University.*

J. P. Selden, A. B. Olivet College, 1900; A.M. New York University, 1912. The Development of the Office of Mayor in New York City. *New York University.*

C. C. Kochenderfer, A.B. Maryville College, 1906; A.M. Olivet College, 1907. Non-partisan Municipal Elections. 1916. *Wisconsin.*

L. E. Carter, A.B. Oberlin, 1914. Public Utilities of Frankfort (Germany). *Columbia.*

C. P. Dodge, A.B. The Government of Frankfort (Germany). *Columbia.*

F. S. Fitzpatrick, A.B. Trinity, 1914. Financial System of Frankfort (Germany). *Columbia.*

- L. H. Gulick, A.B. City Planning in Frankfort (Germany). Columbia.*
L. E. Wagner, A.B. Social Welfare Work of the Government of Frankfort (Germany). Columbia.
K. R. Greenfield, A.B. Western Maryland, 1911. Paternal Government in Medieval Cities of the Lower Rhine. Johns Hopkins.
F. W. Breimeier, A.B. Bucknell, 1910; A.M. Pennsylvania, 1914. The Struggle for Municipal Home Rule in Pennsylvania. Pennsylvania.
C. A. Hanford, A.B. Illinois, 1912, A.M. 1913. Commission Government in the Cities of Illinois. Illinois.

POLITICAL HISTORY

- R. P. Blake, A.B. California; A.M. Harvard. Imperial Legislation on Religious Matters during the Later Roman Empire. Harvard.*
J. W. E. Bowen, Jr., A.B. Wesleyan; A.M. Harvard. Political History of Massachusetts, 1840-1850. Harvard.
H. H. Burbank, A.B. and A.M. Dartmouth. The General Property Tax in Massachusetts, 1775-1792. 1915. Harvard.
W. F. Hall, A.B. and A.M. Harvard. The Political History of Massachusetts, Rhode Island, and Connecticut from 1828-1840. Harvard.
T. H. Jack, A.B. and A.M. Alabama. The Opposition to Secession in Alabama. Harvard.
R. C. Rankin, B. L. Ohio Wesleyan; A.M. Harvard. Pennsylvania Politics, 1790-1838. Harvard.
H. M. Wriston, A.B. and A.M. Wesleyan. The English Monarchomachs. 1916. Harvard.
A. O. Miller, Jr., A.B. Columbia, 1893, and LL.B. 1895. The Revolutionary Government of the State of New York, Central and Local. New York.
J. P. Senning, A.B. Union College, 1908. History of Legislation and Legislative Methods in Connecticut, 1818 to 1840. Yale.
A. L. Trachtenberg, A.M. Yale, 1912. The History of Mine Legislation in Pennsylvania. Yale.
A. C. Norton, S.B. Temple, 1909; A.M. Pennsylvania, 1915. Historical Study of the Separation of Powers. Harvard.
C. P. Highly, A.B. Bucknell, 1908, and A.M. 1909. Bavarian Foreign Relations, 1709-1807: an Example of South German Politics during the Napoleonic Period. Columbia.
V. J. West, Ph.B. Chicago, 1905. History of Corrupt Practices Acts in the United States. Chicago.
L. D. White, S.B. Dartmouth, 1914. History of the Veto Power of the Governor. Chicago.
L. von Lueck Becker, Ph.B. Chicago, 1909; Ph.M. 1911. The History of the Admission of New States into the Union. Chicago.
E. C. Evans, A.B. Missouri, 1910; A.M. 1912; Ph.D. Chicago, 1915. The History of the Australian Ballot System in the United States. Completed. Chicago.
O. E. Richards, A.B. De Pauw, 1910; A.M. Columbia, 1915. The Movement for the Constitution of the United States. Columbia.
L. M. Davis, A.B. Michigan, 1911. Proposals to Amend the Articles of Confederation. Pennsylvania.

G. V. Burroughs, S. B. Whitman, 1909; A.M. Chicago, 1912. Outline Development of State Constitutions before 1850. *Chicago.*

E. D. Ross, Ph.B. Syracuse, 1909; Ph.M. 1910; A.M. Cornell, 1912. The Liberal Republican Movement. *Cornell.*

R. J. Purcell, A.B. Minnesota, 1910; A.M., 1911. The Connecticut Constitution of 1818. *Yale.*

D. S. Whittlesey, Ph.B. Chicago, 1913; A.M. 1914. Constitutional History of Kentucky to 1830. *Chicago.*

J. D. Hicks, A.B. Northwestern, 1913; A.M. 1914. Constitutional Development in the Far Western States since the Civil War. *Wisconsin.*

L. B. Shippee, A.B. Brown, 1903; A.M. 1904. The Federal Relations of Oregon to 1859. *Brown.*

POLITICAL PARTIES

W. O. Lynch, A.B. Indiana, 1903; A.M. Wisconsin, 1908. A History of the Whig Party in the Northwest from 1840. *Harvard.*

H. C. Hockett, A.B. Wisconsin, 1903. Political Parties in the United States, 1815-1825. *Wisconsin.*

H. C. Thomas, A.B. Hamilton, 1909. The Return to Power of the Democratic Party in 1884. *Columbia.*

W. C. Spielman, A.B. Cincinnati, 1906, A.M. 1907. The Economic Basis of Ohio Politics, 1803-1870. *Johns Hopkins.*

A. C. Millspaugh, A.B. Albion, 1908; A.M. Illinois, 1910. Party Organization in Michigan since 1890. *Johns Hopkins.*

GENERAL POLITICAL SCIENCE

D. H. Bacot, Jr., A.B. and A.M. College of Charleston; A.M. Harvard. The South Carolina Land System in Relation to its Political and Social Institutions. 1916. *Harvard.*

A. B. Balcom, S.B. Acadia; A.M. Harvard. The Development of the English Poor Law Policy. *Harvard.*

O. C. Hormell, A.B. Indiana, 1904; A.M. 1905; A.M. Harvard, 1909. Contemporary Opinion Respecting the Granting of Negro Suffrage. *Harvard.*

E. E. Lincoln, A.B. Ohio Wesleyan; A.B. and A.M. Oxford. The Financial Results of State Industry. *Harvard.*

W. J. Shepard, A.B. Willamette and Harvard. Ministerial Responsibility. *Harvard.*

J. H. Park, A.B. Columbia, 1912, and A.M. 1913. The English Reform Bills of 1866-1867. *Columbia.*

O. C. Ault, A.B. Tri-State, 1907; A.B. Defiance, 1911. The Recent Development of Socialism in the United States. *Chicago.*

BOOK REVIEWS

The Diplomacy of the War of 1914. The Beginnings of the War.

By ELLERY C. STOWELL, Assistant Professor of International Law at Columbia University. (Boston and New York: Houghton Mifflin Co. Pp. xxii, 728.)

Closely following the opening scenes of the present European struggle there began a steady bombardment by the belligerents of innocent neutrals and noncombatants by means of white, blue, orange, and other multi-colored papers. A considerable section of the American public, consisting more especially of those unfortunates who had attained into the doubtful distinction of incorporation into "Who's Who," was fairly deluged with these inspired pamphlets containing what purported to be explanations of the true motives of the various belligerents for entering the war.

Of course, a thorough investigation of the causes of this war would take us far beyond a study of these or any other official set of documents. The causes of war are in part psychological and in part social, economic, or political. They have their root in human nature—in the passions, aversions and appetites of mankind; and in the economic, social or political conditions under which men live and struggle for the means of existence and enjoyment.

The real student of the causes of war should probably begin with a study of human nature in its evolutionary and contemporary aspects and of national characteristics as manifested in the past and present. He should also study institutions and social and economic conditions by the comparative and historical methods; the development and policies of human groups in their intergroupal relations; and, finally, the documentary evidence of various kinds bearing upon the issues of peace and war. Amongst these documents, the study of diplomatic correspondence must by no means be neglected, though it is doubtful whether it should rank first.

In his history of the Hannibalic or Second Carthaginian War, Polybius distinguishes between the real or fundamental causes of the struggle and the overt acts or events leading up to that great conflict. He

remarks that we should look for *real causes* in the "motives which suggested such action and the policy which dictated it."

For the discovery of such policies and motives for action the study of diplomatic correspondence would be particularly valuable were it not for the fact that much of this correspondence aims to conceal rather than to reveal truth. It is therefore often necessary to read between the lines—a task always difficult and sometimes hazardous.

Among the works which aim to correlative and interpret the vast mass of diplomatic correspondence immediately preceding this war, Mr. Stowell's book will always occupy an honored and important place. It is written in an honest, sincere, and impartial spirit and from a detached neutral point of view which makes its findings against the Central Teutonic Powers all the more final and effective. In this respect it contrasts favorably with such a book as Beck's *Evidence of the Case* which, however, is more readable and incisive.

The strongest portions of the book are those dealing with the analysis and interpretations of the documents themselves and in their judicious selection and arrangement.

The reviewer agrees with the author that "the piecing together of the documentary evidence under logically arranged headings will be of value to all those with an interest in international affairs, since the perusal of the documents themselves to get at the gist of the material requires a considerable expenditure of time on the part of even an experienced diplomatist To facilitate comparison with the original source, in each case the reference has been placed in parentheses immediately after the extract" (Preface).

The weakest part of the volume is the historic background given in the first chapter, not because of any inaccuracies or lack of knowledge displayed, but because of its inadequacy of treatment. More particularly does there seem to be a failure to appreciate the importance of the challenge to British sea power involved in the German naval program of 1900 and its execution during succeeding years. Nor does there appear to be any recognition of the importance of the effects of the Pan-Germanic propaganda, or of German dreams of exploitation in the Asiatic portions of the Ottoman Empire.

Particularly interesting and important are the author's conclusions which are contained in the last or eleventh chapter. Among the causes of the war, he emphasizes the disturbance of the balance of power involved in its effect upon the German mind of the formation of the Triple Entente, the rivalry of Austria and Russia for the maintenance

or extension of their power in the Balkans, and the invasion of Belgium which definitely brought England into the war.

For the actual outbreak of war he blames Germany most (for risking the peace of Europe in a campaign after prestige), Austria next (for precipitating the conflict), and Russia least (for her general mobilization under great provocation at a time when there was still a possibility of mediation or negotiation). Belgium is given a clean bill of health. Especial attention should be called to the masterly defence of Earl Grey's diplomacy in the long note on pp. 354-359.

In addition to an excellent index, list of questions and answers, chronology, and list of citations, this admirable volume also contains 134 pages of valuable documents beginning with Washington's Farewell Address and ending with a letter by Dr. Dernburg in answer to Dr. Eliot.

On the whole, the book takes rank with Headlam's *History of Twelve Days* as one of the two (or possibly three) best books hitherto produced on the diplomacy of the war.

AMOS S. HERSHEY.

American Diplomacy. By CARL RUSSELL FISH, Ph.D., Professor of American History, University of Wisconsin. (New York: Henry Holt and Company. 1915. Pp. 541.)

The writer of diplomatic history is confronted at the outset with the question of method of treatment of his subject—whether it shall be wholly chronological or whether it shall be topical. The one method affords the more comprehensive survey of historical facts, the other gives a clearer comprehension of the motives and results of diplomatic action. As might be expected from one writing a book for classes in history Professor Fish has chosen to employ the strictly chronological method of treating American diplomacy. The advantage of this treatment is offset by the disconnected and necessarily meager account accorded to many of the most important diplomatic questions.

The chronological method imposes a great burden upon the reader in requiring him to carry a number of incomplete topics through half a dozen chapters with merely a paragraph in each chapter concerning a given topic. It is not conducive to a clear understanding of the Newfoundland fisheries dispute for example to be obliged to follow the diplomacy connected therewith through pages so scattered as the following, 1, 2, 43, 45, 48, 182, 183, 192, 193, 285, 346, 348, 352, 375,

376, 387, 432, 434, 435. Following the chronological treatment the author is forced to include decades barren of any important diplomatic history when the only captions he can find for his chapters are such as these: "Routine" "Baiting the Lion," and "Reciprocity, Claims, Boundaries and Slave Trade." Professor Fish has succeeded in giving a suprisingly complete enumeration of diplomatic events in American history, but the inclusion of many minor episodes prevents an adequate treatment of many of the more important affairs. It seems unfortunate that a volume in American diplomacy should be unable to devote more than a paragraph of twelve lines to such an important diplomatic events as the two Hague Conventions.

The author has made wide use of authoritative sources. In his chapter on "Pre-Revolutionary Boundaries" and elsewhere in the book Professor Fish has used material obtained from his researches in the Italian archives. Excellent judgment is shown in the selection of the best secondary sources as well as a breadth of knowledge of primary sources. The references are exceedingly well chosen, although here again the chronological treatment with accompanying references makes it more difficult to find all the authorities upon a given subject. The most important authority on the Newfoundland fisheries dispute is lacking—*Proceedings of the North Atlantic Coast Fisheries*; 61st Cong., 3d sess., S. Doc. 870, Vols. 1-xii. In connection with the account of the Hague Conferences no reference is made to the important work of J. B. Scott—*The Hague Peace Conferences*.

The book is unusually free from errors and those that exist are of slight importance. Monroe's principal instructions to the American peace commissioners were issued January 28 instead of January 14 (p. 182). The offer to the American government of direct negotiations was made by Castlereagh November 4, 1813, rather than July 13 (p. 179). In assigning the reason why the American commissioners at Ghent consented to the omission of any statement upon impressment in the treaty the author is hardly justified in implying that the instructions from the home government had changed because of the burning of Washington, the influence of the proposed Hartford Convention and the attack on New Orleans, all of these things having occurred after the concession was made by the American commissioners. In a note to the commissioners as early as June 27 Monroe had suggested the omission of impressment. The change of the American government was due mainly to the fact that the European conflict had at this time come to an end and the actual practice of impressment had ceased. The

typographical errors observed are few; "Shawanee" for Shawnee (p. 65) and "big" for brig (p. 228).

Professor Fish writes in a style distinguished by its strength and aptness of expression. He is very successful in stimulating the imagination by a mere historical illusion. His descriptions of men are clear-cut and illuminating.

The book brings American diplomacy down to very recent history. It contains chapters on the Mexican situation and on the European war. The author takes an optimistic view of the success of American diplomacy in general and attributes it not only to the directness of method and honesty of purpose, but also to the large degree of continuity of service that has prevailed in the department of state at Washington.

The intrinsic merit of the book and the present day interest in international affairs justify the hope of the author that his work will be supplemented by the intensive works to which reference has been made "and that it may serve to broaden the basis of public opinion upon which the usefulness and ultimate safety of the United States must depend."

F. A. UPDYKE.

Electoral Reform in England and Wales. The Development and Operation of the Parliamentary Franchise, 1832-1885. By CHARLES SEYMOUR, M.A., Ph.D. (New Haven: Yale University Press. 1915. Pp. xix, 564.)

The aim of Mr. Seymour's book is to depict how far England, in regard to its electoral franchises and its electoral system in general, traveled towards democracy between 1832 and 1885—how the house of commons, which was controlled by the aristocratic and wealthy classes until as late as 1867, was, as the result of the extensions of the franchise in 1832, 1867 and 1884, replaced in the last two decades of the nineteenth century by a house of commons in the election of which the occupying householder is easily and indisputably the dominating element. The undertaking entailed an enormous amount of work on Mr. Seymour's part—much more work than is at first obvious from a book the text of which does not extend to quite 550 pages. It was a task demanding much research in the Hansards, in the parliamentary papers from 1832 to 1906, in the records of those courts which have cognizance of registration cases, and also in political biography of the nineteenth century.

Mr. Seymour's success with his task is so pronounced that it is easy to give at least four reasons why *Electoral Reform in England and Wales* must at once take front rank among histories of England in the nineteenth century, and in particular among histories of parliament and of parliamentary franchises. The first reason is that of the six or seven books on the electoral system, or rather on the reforms of the electoral system of 1832-84, Mr. Seymour's book is the only one that covers the acts of 1832, 1867 and 1884. It is, moreover, the only book in which there is a description of the old franchises on which the unreformed house of commons was elected, and a detailed history of the electoral changes—extensions of the franchise and redistribution of seats—which followed from the reform acts of 1832, 1867 and 1884-85. Before Mr. Seymour published this long-needed book there were excellent histories of the reform act of 1832. Veitch had published in 1913 his interesting and adequate history of the long agitation for the first reform of the electoral system—an agitation which had its beginnings as far back as the American Revolution; and in 1914 Butler published his history of the fortunes of the reform bills of 1831-32 in the Althorp-Durham committee, in the Grey cabinet, in the house of commons, and in the house of lords. Cox's history of the reform bills of 1866 and 1867 was for many years of considerable service; but until Mr. Seymour undertook his work there was no adequate history of the extension of the franchise in 1884—an extension which increased the electors in county divisions from 900,000 to 2,500,000—or of the sweeping changes in 1885 in the distribution of seats in the house of commons. The history of the numerous franchise bills, and of the redistributions in 1832, 1867 and 1885, is traced in detail, all of it of much interest, by Mr. Seymour, who also in these sections of his book analyzes the effect of the several reforms and redistributions on the political power of the aristocratic and agricultural interests and on that of the industrial and commercial interests, as well as the influence of these reforms on the electoral fortunes of the two great political parties.

A second reason why Mr. Seymour's book is of permanent value is the extreme care which he has bestowed on the history of registration. A third reason is that there is in no other book anything approximating to the history of the elimination of corruption in many boroughs that is to be found in those chapters in Mr. Seymour's book in which he traces with much clearness the influence of the several extensions of the franchise, the disfranchisement of the smaller boroughs, the ballot act, and the enactments after 1832 for the suppression of bribery and intima-

tion, or the morality of parliamentary candidates and electors. Bribery and intimidation notoriously survived both the reform act of 1832 and that of 1867, solely because there were so many men of wealth eager for election to the house of commons. The substitution of the ballot for open voting did not at once make an end to these evils. They were centuries old, and ingrained in most of the old boroughs when secret voting was established by the act of 1872. It took time and other forces in addition to enactments to uproot bribery in these boroughs, and especially in the freeman boroughs, which were notorious for electoral squalor. But the drastic and comprehensive corrupt practices act of 1883—the measure that is always associated with the name of the late Lord James of Hereford—worked a greater change for the better than the scores of treating and bribery laws enacted between the Revolution of 1688 and 1883. Moreover, in the elections that came after the extension of the franchise in 1884 there were other forces at work—forces originating among the electors themselves—that created a public opinion in support of the act that James, as attorney-general in Gladstone's administration of 1880–85 had carried through Parliament in 1883. Mr. Seymour does not claim for the existing law—the law of 1883—that it has completely eradicated bribery. Few Englishmen—proud as they undoubtedly are of present-day election morality—would advance such a claim. But as an American student of English franchise laws and of election procedure and usage Mr. Seymour notes with satisfaction that bribery, which was always a characteristic of borough as distinct from county elections, has become so infrequent that it has not been successfully put forward as a reason for unseating a member on petition since the James act went into effect.

Mr. Seymour's aim throughout his book is to show to what extent this reform of the franchise or that redistribution of seats, this amendment of the registration laws or that law directed against electoral corruption, carried England forward towards democracy; and in his final survey of the working of the act of 1883 he insists—and rightly—that it stands as a landmark in the development of democracy in England, and must be classed with the act for the extension of the franchise in 1884, and the redistribution of seats act of 1885.

English as well as American students of the electoral system of England are under indebtedness to Mr. Seymour for the thoroughness of his work in these two sections of his book—the chapters devoted to registration laws and registration courts, and the chapters in which he

traces the changes for the better in election morality which took place between 1832 and the end of the nineteenth century. This indebtedness arises out of the fact that both the evolution of the registration system between 1832 and 1885, and the various forces that in the second half of the nineteenth century brought about the elimination of corruption from the boroughs, have been entirely neglected by writers of general political histories, and have hitherto received no careful or detailed attention from writers who have specialized on particular aspects of the electoral history of England since the reform act of 1832. Electoral squalor such as survived in scores of the older English parliamentary boroughs until as late as the election of 1880, and such as is described in some of Mr. Seymour's pages, could never be a congenial subject to handle. But it engaged the attention of many Grenville committees; of judges who in 1868 took over the work of the long-established Grenville committees; of special commissions of which judges of the court of queen's bench were members; and also of many parliamentary committees; and no history of the representative system, or even of social England, can be complete in which this electoral squalor is ignored. Both political parties were responsible for it. It was far on in the nineteenth century before members of parliament and parliamentary candidates of the whig and tory parties regarded bribery as other than venial; and almost invariably it was the radicals, who, as upholders of democracy, led the way in demanding that there should be a weeding out of the widespread corruption in the older boroughs that the reformed house of commons had inherited in 1832—and inherited without much protest—from the unreformed house of commons.

A fourth reason for the place that Mr. Seymour's book will take among books concerned with England in the nineteenth century is that it is well and clearly written. Hansards and parliamentary papers, as was inevitable, have been largely drawn upon; but Mr. Seymour has a happy faculty of summarizing; and nowhere is the book overburdened with long extracts either from speeches in parliament or from reports of parliamentary committees. The appendices—ten pages in all—are statistical or concerned with the details of the distribution of electoral power between counties and boroughs, as this distribution was affected by the acts of 1832, 1867, and 1885.

E. P.

Maryland Constitutional Law. By ALFRED S. NILES. (Baltimore: Hepbron and Haydon. 1915. Pp. 588.)

This work deserves notice not only because it is well done, but because it is a study in a much neglected field of American constitutional jurisprudence. The author, who is a lecturer in the University of Maryland Law School, has prepared the volume for the use of his students, but that it will be found of value to lawyers and to students of American constitutional law there can be no question. The arrangement adopted has been that of taking up *seriatim* the clauses of the constitution and commenting upon them in the light of the judicial and legislative interpretation which they have received. This mode of presentation has been selected, the author tells us, not because it is the logical one, but because his own experience as a teacher has led him to believe that thus the constitution is better fixed in the mind of the ordinary student. "Such an arrangement visualizes the document, while a philosophical treatment is apt to lead to vagueness and uncertainty." With this statement the reviewer is inclined to agree where the attempt is not made to advance further into the subject than is possible in the time that can reasonably be given to it in the curriculum of the ordinary law school. An additional feature, admirable from the pedagogical standpoint, is the brief presentation at the close of each chapter of a considerable number of illustrative cases, the statements to which they apply being indicated by asterisks in the text. The book contains a table of cases, and an appendix in which are given the texts of the various constitutions and amendments thereto, under which Maryland has lived. It is to be hoped that this book will serve as an example for similar works dealing with the public law of other States of the Union.

W. W. W.

Law and its Administration. By HARLAN F. STONE. (New York: Columbia University Press. 1915. Pp. 232.)

This volume, composed of lectures delivered upon the Hewitt foundation at Columbia University, by the Dean of the Law School, furnishes to the layman an admirable introduction to the study of law and its administration in the United States. The style is untechnical, and the mode of presentation simple and clear. The nature and functions of law, the relation of law and morality, and fundamental legal conceptions provide the topics for the first four chapters, the remaining four being

devoted to procedure, bench and bar, and law reform. While pointing out various evils in present legal conditions in the United States, Dean Stone would be described as a moderate reformer. To a not inconsiderable extent he ascribes the unsatisfactory conditions which he finds to the character of training for the bar which prevails in this country. "The impartial student of our legal system is compelled reluctantly to admit that, taking into account the entire history of the American bar, there has been a deterioration in our bar both in its personnel, its corporate mode, and, consequently, in the public influence wielded by it" (p. 165). "The result of the methods of admission to the bar which have generally obtained throughout the United States is that they have set a low standard of character and attainment for the entire bar." Dean Stone is not disposed to grant that justice should be administered from the bench in accordance with the conceptions of social justice which the judges may happen to entertain. This is a legislative rather than a judicial criterion:—the distinction between legislation and adjudication being effectively stated. The view is expressed that the use of injunctions has been but seldom abused, and that at the present time there are few States where persons charged with crime escape conviction because of technicalities of procedure. The unsatisfactory condition of civil procedure in New York under the present code is, however, emphasized, as contrasted with the working of the short practice act of Massachusetts supplemented by rules of court; and the recently adopted practice act of New Jersey is commended as an ideal form of procedure. The objections to the "recall of decisions" is so succinctly stated as to deserve quotation. "All that would be ascertained by any given recall would be that the statute determined by the court to be unconstitutional was by the recall determined to be constitutional. Whether constitutional in whole or in part, what reason should be assigned for the recall, what judicial principle established, or whether the principle should be extended to other classes of cases, are questions which must remain unanswered by the recall. In other words, it is an attempt to establish a constitutional rule for judicial guidance by popular vote, without announcing what the rule is either in form or substance. We thus amend our constitution without indicating the scope of the amendment and leave it to the courts and legislature to guess what class of legislative acts may be lawfully enacted."

W. W. W.

Nationalism and War in the Near East. By a Diplomatist. Edited by LORD COURTNEY OF PENWITH. Carnegie Endowment for International Peace. (Oxford: Clarendon Press. 1915. Pp. xxvi, 428.)

If the author's personal identity is not disclosed, his exceptional competency to deal with the subject is evident—his first hand familiarity with Balkan geography and racial characteristics, intimate knowledge of local and European diplomacy, well grounded historical perspective, a detached, impartial point of view, and a vigorous, sometimes colloquially expressive, style which compels attention. No other recent book on the Near East approaches this in serious import.

Written before the outbreak of the present European war, except for a few added footnotes and the preface, the author's reflections upon the situation left by the Balkan wars are of especial interest in view of the event. Of what has turned out to be the three-fold relation of that situation to the present war, the fundamental importance of the accession of influence to Russia and the Triple Agreement and the blocking of the Teuton advance to the East, is pointed out with the comment "It has already been shown that the Slav power may well think that the time has come to meet the economic expansion of German nationalism in the Near East by war; and it is now suggested that the Teutonic Powers may also think that the time has come to reopen by war the outlet to the Near East that war has just closed;" the Serbo-Croatian situation, which furnished the spark, is alluded to, but lies outside the author's survey; while the Macedonian question, which is of course the real cause of Bulgarian intervention and thus has again focussed public interest on the Balkans, is the central subject of the book. As the result of the failure to reach an equitable settlement of this question, the author foresaw the likelihood of a Bulgarian offensive alliance with Austria or Turkey (p. 354), and peril to Serbia and Greece. The first Balkan war, or the "War of Coalition," was a "perfectly normal development of the nationalistic movement," the "last chapter" (but?) "in the volume which is that of the nationality movement of the eighteenth and nineteenth centuries—the history of the epoch of national democracy" (p. 32). But the second the "War of Partition," was nursed by the uncompromising demands of the military parties, was precipitated by a Bulgarian military order unauthorized by the premier, and the peace was dictated by purely military considerations, including the, to the author, false doctrine of "balance of power." "The result has

been an excellent example of the danger of basing such calculations upon purely material considerations such as territory and population, and ignoring moral forces such as national consciousness and international comity" (p. 354).

The relations to the causes and events of the present war will perhaps be the chief interest of the many readers at the present moment. But the book is rich in general reflections upon war, its causes justifiable or unjustifiable, its effects good or bad, upon tendencies democratic or imperialistic, upon the superiority in ultimate vision of "democratic diplomacy" over "Realpolitik," etc. Whether or not one agrees with the conclusions, they are thoughtful and strikingly stated. The indisputable value of the book lies in the penetrating analysis of the specific conditions of "nationalism and war in the Near East." Everyone who has ever lived for any length of time in one of the Balkan lands has felt, in an almost physical sense, the overpowering dominance of nationalistic sentiment raised to the nth power. The author shows in detail that nationalism is the one vital factor, absorbing all others, so that, for example, the church is no constructive moral force, but only an agency of nationalism. "Balkan nationalism is still in active eruption—it is hot enough and fluid enough to penetrate any crack and ignite any combustible."

CARL D. BUCK.

Economic Origins of Jeffersonian Democracy. By CHARLES A. BEARD. (New York: The Macmillan Company. 1915. Pp. ix, 474.)

This volume, which, the author promises, will be shortly followed by another on "Agrarianism and Slavocracy," is the second of Professor Beard's notable contributions to the fulfilment of the prophecy quoted by him in the preface, that "American history will shortly be rewritten along economic lines."

Professor Beard, taking issue with the conclusions of Professors Bassett and Libby, that the period of Washington's administration was a "purely transitional era," marked by no great and definite political cleavages, finds therein the same great conflict between the rugged debtor-yeomanry and the creditor "fiscal view," between agrarianism and fluid capital, that dominated the campaign for the ratification of the Constitution, and traces it down, translated by the current political nomenclature and circumstance, into Federalism versus Republicanism, and, later, into Federalism and Jeffersonian Democracy.

Jeffersonian Democracy at best, according to the author, "meant simply the possession of the federal government by the agrarian masses led by an aristocracy of slave-owning planters and the theoretical repudiation of the right to use the government for the benefit of any capitalistic groups, fiscal banking or manufacturing." Professor Beard by no means shares the naive faith of a distinguished Senator from Mississippi and others in Jefferson's passionate "cherishment of the people" as the basic principle of Jefferson's political creed. While, of course, on the platform and in the press, Jefferson was the incarnation of an abiding belief in the virtue of the soil and an abhorrence of the "arts and artifices of commerce, finance and manufactures," any explanation in these terms of his Democratic partisanship appears to the author as superficial as did the "inspiration theory" of the Constitution. No clash of foreign or indigenous philosophical preconceptions or political and social ideals, but agrarianism versus fluid capital is the author's simple key to the "Great Battle of 1800." "There is no doubt," he says, "that Jefferson believed the landed interest to be the economic foundation of the Republican party. This would be inferred, of course, from his general notion that agriculture was the only enduring basis of republican government, but on more than one occasion, he referred to that interest as the object of his solicitude in politics and the chief support of the Republican party." But Professor Beard finds that Jefferson could always on occasion bury his dislike of the "paper feudal system," the "Anglican monarchical aristocratical party." "Jefferson was what Hamilton declared him to be, a theorist who never allowed his dogmas to interfere with the pressing exigencies of practical affairs. But when all is said and done, it yet remains true that, within the limits of stern realities, Jefferson was agrarian in his principles and practices."

Naturally, the portion of this volume bearing most directly upon the thesis of that school of American historians with which Professor Beard's name is invariably associated, is that containing data on security-holdings by public officers or great local groups laboriously gathered by the author from the Treasury books at Washington, as for instance, in his analysis of the vote on the Assumption and Funding Bills. One may venture to suggest that some of this important material is rather concealed by too much foundation and explanation. The relevancy of Chapter XI on The Political Economy of John Adams is not always apparent.

Without in any way committing one self to the main economic hy-

pothesis of the work, the value of the radical and healthy stimulus to American historical research afforded by this second phase in Professor Beard's American trilogy of economic determinism cannot be overstated. It is to be hoped that the trilogy will be extended to a cycle, the epilogue of which will be set in our own day.

FRANK I. SCHECHTER.

Socialized Germany. By FREDERIC C. HOWE, LL.D. (New York: Charles Scribner's Sons. 1915. Pp. x, 342.)

The purpose of this work is, *first*, to explain the foundations of efficiency, the bases of the extraordinary material strength, which the European conflict has revealed Germany as possessing; *second* and chiefly, to suggest "a new kind of social statesmanship which our own as well as other countries must take into consideration if they are to be prepared to meet the Germany which, in victory or defeat, emerges from the war." It is the system of state socialism, described in this volume, which "has largely made Germany what she is, a menace or a model, a problem to statesmen of other countries, and a pathfinder in social reform." It is the firm conviction of the author that "Germany is more intelligently organized than the rest of the world. The individual German receives more from society. He is better protected in his daily life. The gains of civilization are more widely distributed than they are with us."

State socialism in Germany is not, in the opinion of the author, entirely a product of modern influences and conditions. Much of it springs from the feudal elements which are still vital and effective in German society. The landed feudal aristocracy, the Junker class, is the dominating political force both in Prussia and the Empire. It is absolutistic, militaristic and imperialistic. It has always believed in a strong state and in broad state powers. The liberal, individualistic and *laissez faire* economic and political ideas of early nineteenth century England have never found lodgment in German philosophy. To this feudal viewpoint no opposition is raised by other classes. Monarchical or state socialism is the most natural thing in the world to Germans generally. "There have never been any presumptions in Germany against the state. From earliest times the great landed estates and forests have been owned and operated as part of the fiscal system. The lives and property of the individuals have been regulated with inquisitorial officialism. The state has been supreme in the eyes of all classes."

The comparative recency of the industrial revolution in Germany has permitted these feudal traditions to persist; feudal psychology has been merely adjusted to modern conditions. The state expanded its activity and its control over the new fields of modern industrialism, when these developed, as a matter of course. Moreover the highly efficient permanent civil service of Germany lends itself to such enlarged state functions, as the more democratic and corrupt administrative services, with which Americans at least are familiar, do not.

The policy of state socialism is a product of the German conception of the state, to which the author contributes one very interesting chapter. In his opinion this has no counterpart in ancient or modern times. The Roman Empire in the height of its power is the only state with which Germany can be compared. The state's activities are all a part of the German conception of *Kultur* which "includes state socialism, social legislation, the conservation of human life, and the promotion of the well-being of the people. All of the individual and collective contributions which Germany has made to the world form part of *Kultur* as the German understands the word." Unity is the predominant note in Germany. The nation thinks and acts as a great human mechanism. No group has been permitted to sacrifice the state to its exclusive control. Each class is ready to make the sacrifices, to accept the limitations on its privileges, necessary to national welfare. This process of socialization has been greatly promoted by the European war, and after the war there will doubtless be a great increase of state activity. Individual initiative and aggressive attack on the problems of industry, commerce and social intercourse are the products of this régime. A desire for service, exemplified by the eagerness to accept unpaid positions on city councils and committees, is a conspicuous feature of German public life. This high efficiency and potency of national life is secured, to be sure, at a certain cost. The most serious price is the caste system which runs through every fiber of the state. Unchallenged by the majority of the people who assume that an individual is born to his place in society, and that only in exceptional cases may he hope to rise from it, this vests the ultimate control of government in the hands of the old privileged classes. Caste prevails in social intercourse; it rules education. This is not, however, so the author thinks, a necessary part of state socialism. Thoroughly lacking in the democratic idea as the German state is, he believes that "the institutions that Germany has developed, and the efficiency that has been achieved are in no way inconsistent with democracy."

A considerable mass of valuable information has been accumulated on the various phases of imperial, state and municipal social activity. Not only is a full account given of the various state owned and operated industries, but the elaborate system of state regulation and control of private industry and social life is fully treated.

Unfortunately there are a number of errors and inaccuracies which mar in considerable degree the general excellence of the work. In treating of the constitutional organization of the government there is a tendency to general statements which will scarcely bear analysis. Thus the statement (p. 13) that "the constitution [of Prussia] was merely a recasting in legal form of the old feudal order," will not approve itself to students of German constitutional history and law. Nor is it scarcely correct to say (p. 13): "The King became the Kaiser, and along with the Bundesrat, or Senate, the final repository of authority." The Parliament Act by which the veto of the House of Lords in England was abolished is referred to (p. 14) as dating from 1910, instead of 1911. The number of Prussian votes in the Bundesrat is given (p. 28) as 20 out of 58 votes, "her quota having been increased from 17 by contracts made with smaller states subsequent to 1871." This was true some years ago, but Prussia no longer controls the two votes of Brunswick, while three delegates have now been admitted from Alsace-Lorraine, making the total number 61, and these three votes are presumably under Prussian influence. Hence the number of Prussian votes is either 18 or 21, but in no case 20, and the total number is 61, not 58. Greater Berlin is stated (p. 30) as sending eight members to the Reichstag; the number should be six. It is asserted (p. 31) that the members of the Reichstag are not paid. This was formerly true, but since 1906 they have received 3000 marks a year. The description (p. 40) of the three-class electoral system in Prussia is incorrect, in stating that "those who paid one-third of the taxes are permitted to choose electors *who in turn elect one-third of the deputies to parliament.*" In fact the three classes choose each one-third of the electors who all together in one electoral college by absolute majority choose the one, two or three members of the Reichstag to which the constituency is entitled. The number of members in the Prussian lower house from Berlin is given (p. 42) as nine, whereas it has been twelve since 1906. One wonders at the definiteness of the statement (p. 45) that the long struggle over dues and taxation by which the English constitution was evolved "ended in the subordination of the Crown to Parliament, which up to 1909 was, in effect, subordination

to the landed aristocracy." What radical change occurred in 1909 that warrants so positive a statement? The name of President Pritchett of the Carnegie Foundation is spelled (p. 217) "Pritchell;" that of Baron vom Stein is given (p. 267) as "Baron von Stein." The description of the three-class electoral system for Prussian cities (pp. 269, 270) is correct for the period before 1900. Quite a different system, though still a three-class system, is now employed. The amount of tax paid by each class is no longer equal. In 1900, for example, in Berlin, Class I paid a tax of 25,322,699 marks; Class II paid 25,325,199 marks; while Class III paid only 11,096,743 marks.

WALTER JAMES SHEPARD.

Government and Politics of the German Empire. By FRITZ-KONRAD KRÜGER. (Yonkers-on-Hudson: New York. World Book Company. 1915. Pp. xi, 340.)

This little book is the first to appear of a series, entitled "Handbooks of Modern Government," under the editorship of Dean David P. Barrows and Prof. Thomas H. Reed of the University of California. Other volumes will deal with "American Dependencies," "The Government of the Swiss Confederation," "Government and Politics of Great Britain," and "Government and Administration of Prussia and the Federal States of the German Empire." The volume under review sets a high standard of excellence which, if maintained by its successors, will make the series one of the most useful and notable contributions in recent years to the field of government. More than the usual attention has been devoted by the publishers to the make-up of this handbook. In attractiveness of design it leaves little to be desired. It is adorned by handsome illustrations of the three kaisers and the five chancellors, and contains also two very interesting and useful charts, one of the Reichstag hall showing the seating of the different parties; the other a map of Germany showing in colors the distribution of the members of the Reichstag according to party.

The author of the present work holds the doctorate from Tübingen and likewise a degree from the University of Nebraska. He thus combines the intimate and detailed knowledge of the German scholar with the appreciation of the needs and requirements of the American student. There is evidence throughout the pages of the work of both these qualities.

Since one of the forthcoming volumes is to treat of the government

and administration of Prussia and the other member-states of the federation, this volume is confined to the imperial government alone. For this, however, the treatment is well-proportioned and very satisfactory. The information is thoroughly up-to-date, a complete mastery of the sources being at all times evident. There is a chapter on "The Physical Basis of the German Empire," one on "The Foundation of the German Empire," one on "The Development of the Constitution." Then follow chapters on the nature of the Empire and its several organs of government and the various branches of the administration. There are chapters on the government of Alsace-Lorraine, the parliamentary history of Germany, on Germany's foreign policy and on the colonial dependencies. Not the least valuable feature of the work is the critical bibliography, which occupies 33 pages and is classified under fourteen heads. There is also a tabular outline of the government of the states of the German Empire which will doubtless prove useful. Selected bibliographies are appended to each chapter, and footnotes are used, not in abundance, but where required.

The intention of the editors of the series is stated as being not "to limit authors in the expression of their opinions, provided that views are expressed with courtesy and moderation." The author of the present work is in "general sympathy with the principles of the National Liberal party of Germany;" he is clearly in entire accord with German national policy and viewpoint. This cannot be said to bias his judgment, for he retains throughout the work the scholarly and scientific attitude. While some of his opinions, especially on foreign policy, will not be accepted by a majority of American students, they are not formulated in a manner to give offense. An example of the author's mode of treatment of foreign affairs is found in the statement: "Indeed a dangerous cloud on the political horizon of Europe disappeared with the settlement of the Morocco question. Unfortunately the calculation of many German diplomats that France would from now on be satisfied with the conquest of her enormous African Empire and forget the loss of Alsace-Lorraine proved wrong. The middle of the year 1913 witnessed again a *revanche* excitement in France similar to the chauvinism of the eighties, and warned the German people to continue their watch on the Rhine." It is interesting to observe that the author opposes himself to "the opinion of the majority of scholars in the United States," in respect to the question of the establishment of ministerial responsibility in Germany. Apparently he believes that the German government is in a condition of stable equilibrium and that evolution

toward the ministerial or parliamentary type of government is not to be expected. His judgment on some of the works cited in his bibliography will doubtless be questioned. Thus he describes Seignobos' "A Political History of Europe since 1814" as "a book against which we must warn." "It contains," he declares, "very bad mistakes, and it is impossible that the author has really investigated his German sources, to which he refers." A number of misspelled names have been noticed among his bibliographical citations. But in spite of any minor defects the work is to be welcomed as affording the most recent and reliable information on the government of Germany. It will doubtless find wide use as a text-book in courses in universities on European governments, and should also prove of great service to the general reader.

WALTER JAMES SHEPARD.

The Diplomatic Protection of Citizens Abroad or the Law of International Claims. By EDWIN M. BORCHARD. (New York: The Banks Law Publishing Company. 1915. Pp. xxxvii, 988.)

There should be no hesitancy in acknowledging at the outset that Dr. Borchard in this scholarly, comprehensive work has made a most important contribution to the knowledge of international law as practically applied. He has mined thoroughly in a vast field of facts and precedents, particularly in the decisions and acts of the Department of State. Having evident freedom of access to its archives, Dr. Borchard has made himself a trustworthy authority on the theory and practice of the United States concerning the international rights and obligations of aliens. There is every evidence throughout the book that the author has consulted and profoundly studied a wide range of authorities and sources.

The method employed by Dr. Borchard in treating this great subject is open to criticism. The monumental work of John Bassett Moore though entitled an *International Law Digest* does not pretend to do much more than present in well edited form an enormous number of valuable precedents and opinions. This material can hardly be said to be presented in completely *digested* form. Dr. Borchard, on the other hand, while not calling his book a "digest," does actually attempt to formulate, to deduce, and to apply general principles and specific rules of international law. His method is somewhat confusing. He

starts out by trying rather laboriously to elaborate a philosophy of the rights of aliens to protection and never abandons his quest. The question keeps reappearing in the discussion of various specific instances. One has the feeling that the author really has not completely solved the problem. In one place (pages 11 to 15), he emphasizes the "rights of humanity" as at least one source of the claim to protection. In another place (p. 353), he states that: "It seems preferable to consider the state's action (of protecting its nationals) as a sanction for the right of international intercourse between states and individuals, according to the standard of conduct and treatment recognized as proper and lawful by international law and practice."

There is no denying that the author's theories are usually of live interest and most suggestive, but unfortunately he is often abrupt, uncertain, and inconclusive in his arguments. The book would have gained in practical value if Dr. Borchard had contented himself by first presenting his imposing array of precedents and opinions, and had then sought to deduce the philosophical conceptions and legal principles involved. To mix the two methods is most unfortunate and constitutes a structural defect of a serious nature. Moreover, the reader comes to realize that he must be somewhat on his guard on account of the author's inconclusive method of treating legal theories, and must center attention mainly on his extremely able presentation of facts and precedents.

Evidence of the structural defect of this book is to be found in the table of contents. The main divisions of the subject indicated are Part I, Relation between State and Citizen, State and Alien, and between State and State; Part II, The Exercise of Diplomatic Protection; Part III, The Object of Protection—the Person and Property of Citizens; and Part IV, Limitations on Diplomatic Protection. This arrangement proves to be more or less arbitrary and artificial. The same topics keep reappearing in all these main divisions of the subject, without complete treatment in any one place, or—it should incidentally be remarked—without adequate cross references. The subject of nationality, for example, is treated in Part III (most admirably), but we find in Chapter 2 of Part IV, a most important presentation of the question of expatriation, certainly a vital aspect of nationality. It is difficult to understand the reasons for so scattered a treatment of essentially one and the same subject.

In spite of these strictures, one cannot fail to recognize the immense value of Dr. Borchard's work. It should prove an authoritative manual of reference for diplomats, consuls, lawyers, teachers and students of

international law. It might well serve as the basis for an advanced course of study and research in that field. Supplementing with fresh and well chosen material the Digest by John Bassett Moore, to whom the book is most appropriately dedicated, this work should prove of the greatest importance in the immense task of crystallizing and formulating those exact principles and rules of international law which shall control the conduct of nations.

A general conclusion from a survey of the immense variety and complicated character of the multitudinous questions which give reasonable ground for international controversies, as set forth in Dr. Borchard's book, is that the field of international law is infinitely more extended and involves much more definite subject matter than has been heretofore realized. One is led to see that the attempt to classify as matters of Private International Law, or mere Conflict of Law such questions as relate to rights of nationality, domicile, etc., which at any moment may properly give rise to diplomatic intervention, is illogical and preposterous. When the nations of the world come to realize that the requirements for peaceful intercourse demand that they should reach definite agreements on all these matters and such other matters as the rights of foreign creditors, and the liability of a state for tortious acts, a comprehensive work of the character of Dr. Borchard's will prove of great practical value in aiding in the task of reaching international agreements of various kinds, whether of specific conventions on particular topics, or of statutes and codes of a legislative nature. It is undoubtedly an important contribution to the literature of international law.

PHILIP MARSHALL BROWN.

Outline of International Law. By ARNOLD BENNETT HALL.
(Chicago: LaSalle Extension University. 1915. Pp. v, 255.)

The conjunction of the subject International Law with the name of Hall is most suggestive. The author states in the preface: "This volume is intended as a brief, non-technical statement of the underlying principles of international law. It is not written for the specialist, but designed solely for the general student and reader who is interested in the world problems of the day." He further states his belief "that an elementary statement of the legal principles involved would facilitate the popular study and understanding of these problems."

Mr. Hall reveals a good grasp of his subject, and is clear in his state-

ments. His *Outline*, however, is so palpably an *outline* that its 106 pages virtually constitute hardly anything more than an expanded syllabus.

It is possible that this *Outline* may meet the need suggested by the author: that international law should be popularized, and made easy of access to "the general student and reader." One cannot but be somewhat apprehensive, nevertheless, that skeleton outlines may tend to encourage superficiality of thought. One is led to ask whether it is really desirable to simplify knowledge and reduce it to the limits of newspaper headlines. Is it not rather the obligation of scholars to encourage "the general student and reader" to realize the extent, and the fearfully complicated nature, of many of the problems which challenge human interest?

When one brings to mind such excellent books of handy reference as *Wilson's Handbook of International Law*, and *Hershey's Essentials of International Law*, both of which are replete with marginal references and documentary data, it is difficult to understand just why it should have been thought desirable to publish this *Outline*. It is true that the author also has provided further references and important documents for consultation, but not nearly as comprehensively and serviceably as in the two works cited.

It would seem fair to assume that Mr. Hall's little book is particularly calculated to be of service as a textbook to be used subordinately as a sort of syllabus in a brief course of lectures. In this sense it would seem to be of rather restricted utility, as most teachers of international law would either prefer a more comprehensive textbook or supply their own individual outline of lectures.

PHILIP MARSHALL BROWN.

The People's Government. By DAVID JAYNE HILL. (New York: D. Appleton and Company. 1915. Pp. 287.)

The relation of the individual to the state has received renewed emphasis as a result of present conditions in Europe, and Political Science has in consequence been enriched by a number of studies discussing the nature of democracy, the basis of individual and national rights, the interrelations of government and liberty, the sources of state authority and other similar subjects. Mr. Hill has attempted to trace the development of the state from the time when it was the embodiment of force, through the period in which law was regarded as

a sovereign decree, until he arrives at the final stage in which law is recognized as a mutual obligation and the citizen appears as lawmaker defining the sphere of state activity and voluntarily submitting to his self-imposed restrictions.

The historical chapters of the book which deal with earlier forms of the state are forcibly written in spite of the fact that some of the generalizations must be taken in a popular rather than in a scientific sense. In contrast with Mr. Ford's *National History of the State*, which asserts that the state made man and that his rights are in consequence not innate but derivative, Mr. Hill finds that the state is "coeval with man as a social being," that rights are based upon an intuition of mutual obligation, and that law is the embodiment of principles of justice inherent in human reason. The chapter dealing with law as a mutual obligation is full of sound political philosophy; in it the rights of life, liberty, and property are subjected to a detailed examination and the author's deductions are at once convincing and singularly illuminating. With respect to the problem of the partition of property attention is called to the fact that most property is the result of joint effort and consequently "the only manner in which mutual obligation can be recognized in the process of wealth production is by permitting the partners in this process freely to estimate the value of their respective contributions by making specific contracts in each particular case" (p. 153). Unfortunately Mr. Hill leaves unanswered the crucial question as to whether the laborer is really able under present conditions to make a free contract with his employer in all cases.

But Mr. Hill is in no sense reactionary in his views of the province of government, as his remarks upon "the injustice of monopoly" will show; he asks for equal opportunities for all, not for unequal laws to equalize the inequalities of men. In speaking of the alleged constitutional barriers to reform he warns us that we must not let our sympathy with poverty and suffering lead us to advocate social legislation which would "sweep away the basic guarantees upon which the whole edifice of justice is erected." But more insistent still is Mr. Hill's warning that democracy, now that it has won the power to impose its will, must not itself become arbitrary and absolute.

It is refreshing at a time when there is so much loose thinking upon the subject of popular control of governments to be reminded that mere majorities do not constitute public opinion, that legislation is not of itself a cure-all for the ills of the body politic, that true reform must be based not upon coercion but upon an enlightened sense of justice among

the people. In this respect the brief volume before us is a valuable contribution to the literature of political philosophy.

C. G. FENWICK.

The History of Twelve Days, July 24th to August 4th, 1914.

Being an Account of the Negotiations Preceding the Outbreak of War, Based on the Official Publications. By J. W. HEADLAM, M.A., formerly Fellow of King's College, Cambridge. (New York: Scribner's. 1915. Pp. xxiv and 412.)

In the opinion of the reviewer this is one of the very best books, which has been published on the immediate causes of the war. It is fuller than Beck's *Evidence in the Case*; constructed from ampler materials than Price's *Diplomatic History of the War*; and worthy to stand beside Stowell's excellent *Diplomacy of the War of 1914*. It is altogether unlike the numerous biased and exaggerated accounts which have been written by advocates on both sides, since it is throughout founded upon a full exposition and careful interpretation of the primary documents upon which at present our conclusions must be based. About a third of it is made up of parts of the papers published by the various European governments, which are neither scantily quoted nor printed at length in appendixes, but set into the text of the volume, in the actual narrative of which they take their proper part. And it is a tribute to the skill of the author and his mastery of the documents which he uses that such numerous and often lengthy extracts inset and printed in smaller type little interrupt the story or seem out of place in the absorbing narrative where they stand.

In such a book the opinion of the author about his sources is of great value, and it is to be noted that his confidence in the British White Paper and the French Yellow Book results from the fact that notwithstanding difference in character they seem to him amply to explain and corroborate each other in matters of occurrence. The Belgian Grey Book and the Serbian Blue Book assist in only a small portion of his account, while the Russian Orange Book and the Austrian Red Book are satisfactory as far as they go but disappointing because they leave so much untold. Least satisfying of all, he thinks, is the German White Book, which is both scanty and lacking in qualities to inspire confidence. "The feeling left upon my mind after a long and careful study of all that has been put forward by the German Government is that it is impossible to put any reliance on anything that they say

either with regard to their own motives or intentions, or in regard to the simplest facts, unless their statements are amply corroborated from other sources" (p. xi).

The book consists of two parts, in each of which there are introductory chapters, in the first on Serbia and Austria, including an account of the fateful note, and in the second a chapter on Great Britain and the *Entente Cordiale*, and another on the history of Belgium. The remainder of the work, saving four short appendixes, has to do with the difficult story of the negotiations and diplomatic working in the days from July 24 to August 4. The narrative is admirably arranged, so that the story is always clear and the conclusions decisive. The papers of all the governments are used throughout to whatever extent they can throw light upon the situation, and as far as I have been able to note they are used accurately and in good faith. The statements of the different representatives are carefully examined and subjected to intelligent criticism in comparison with each other. Nowhere have I noticed the deplorable tendency, so common in lesser works on this subject, to employ the documents for the purpose of illustrating and embellishing theories already conceived; but the documents are studied so that the author may discover what story they tell, he interpreting them and explaining as he understands them. He does not follow the easy method of apparent fairness, which consists in avoiding difficulties by coming to no conclusion, or by artificial distribution of praise and blame to both sides. He makes his own interpretations and he has his own point of view, which is favorable to the allies of the *Entente*; but his point of view is frankly stated so that the reader is not deceived by it, and this point of view remains merely a factor subordinate to the documents and the statements deduced from them, whereas in some of the writing of Burgess, Münsterberg, and others the point of view and ideas preconceived appear to be body and soul of the work with facts and documents subsidiary.

Among the numerous conclusions which the work contains may be set down the author's opinion that the note to Serbia was deliberately so framed as to be an ultimatum, so phrased as to insure rejection, and with such scant time allowed as to make it impossible for other nations to assist in obtaining the satisfaction demanded and so avoid war; that Russia tried in vain to have the time extended; that Russian mobilization was justifiable and necessary for her interests; that Germany would not have given Austria a free hand if she had not known in advance the nature and contents of the note to Serbia, though it may be

that it was not communicated to the German government in official form before it was sent: that probably Prince Lichnowsky in London did not know this and may not have been in the secrets of his government; that England and France, and apparently Russia, did not want war, and strove honorably to avoid it; that Sir Edward Grey endeavored to accomplish this by all means in his power, desiring to substitute a concert of the powers for two great hostile alliances; that by July 28 Germany had resolved upon war, and that thereafter neither partial nor total mobilization by Russia really determined the matter; that British diplomacy was wise in preserving a non-committal attitude to the very end; that England, whatever, might have developed afterwards, was actually brought into the struggle by the violation of the neutrality of Belgium.

I have noted one or two typographical errors, and a few mistakes of minor importance, and I believe that a table of the days of the week in connection with the dates of the twelve days would be of great service to the average reader. But in respect of all more important matters I have found the book admirable and interesting, and I believe it deserving of very high praise.

EDWARD RAYMOND TURNER.

The European War of 1914: Its Causes, Purposes, and Probable Results. By JOHN WILLIAM BURGESS, Ph.D., J.U.D., LL.D. Formerly Professor of Constitutional and International Law, and Dean of the Faculties of Political Science, Philosophy, and Pure Science, in Columbia University. (Chicago: McClurg and Co. 1915. Pp. ix and 209.)

This book, as a contribution to war literature, little merits a review, but it does serve very well to illustrate the faults which characterize a great deal of similar writing on the same subject. It may be said at once that the volume makes pleasant reading, and that some portions of it are interesting and instructive, especially those least related to the theme which it purports to treat of. The author certainly makes good his contention that American export of munitions is a right and not a duty (ch. vii); and parts of his description of the Dual Monarchy are excellent (pp. 160 to 162). More than a third of the volume has to do with the good qualities of Germans, and the service rendered by Germans in America in former days with England's old hostility and oppression, and with other things which pro-German advocates in this

country usually describe when they undertake to write about the causes of the war.

That part of the book which has to do with the origin of the conflict and its possible consequences is devoid either of merit or importance. First the author deals with the occasions of the war. He has read diplomatic papers, he says, for fifty years, and taught others to read them for nearly forty. To him it is remarkable that a perusal of the British White Paper should lead people to think that Sir Edward Grey desired peace. "I have read all of the numbers of this paper through many times and can repeat verbatim the language of those which are pivotal and crucial, and I am quite sure that there is another way to interpret that paper" (pp. 1, 2).

The author's method is not so much to deal with the paper itself, as to explain what it says in terms of what he is confident the diplomats must have meant. He states what he thinks Sir Edward Grey should have done—and the great man may perhaps smile some day if he reads the patronizing and impertinent little lecture which he ought to have given to the Russian government (pp. 17, 18); next he says that instead of doing what he thinks should have been done it appears that Sir Edward acted as one who desired to bring about a war of extermination against Germany; and finally he asks the reader whether the conclusions which he wishes to prove would not be the elements of such a plan (pp. 18, 19). And what are the conclusions which he reaches? That England encouraged Serbia to resist the demands of Austria; that she encouraged Russia to intervene between the two; that she then attempted to secure arbitration of the dispute between Russia and Austria-Hungary; that she represented Germany as responsible for failure to bring about this arbitration; that she did not restrain Russian mobilization; that she encouraged France to sustain Russia; that she refused to come to any understanding with Germany upon any conditions; and at last entered the war upon a pretext (pp. 19, 20, and following).

For the conclusions thus stated he seeks in the British paper such fragments as will give him corroboration or illustrative material. There is no patient examination, no careful analysis of the paper itself, no comparison of this paper with the publications of the other governments; no real criticism. He does not lead up to his conclusions, but first makes them and then bolsters them up as best he can. Opinions, illogicalities, questionable statements, and exaggerations abound. What the Germanic powers did is unhesitatingly assumed to be right, and the actions of others judged accordingly. To the author there can be no

doubt that the murder of the archduke was for the purpose of causing a war to destroy the Germanic empires (p. 9); that the question between Austria and Serbia was unarbitrable (p. 29); that Germany was bound to assist Austria, without similar obligation of France to Russia (pp. 33, 34). And such confidence does the author have in his explanation that he declares: "I believe it is the way every unprejudiced historian and diplomatist will read it twenty-five years from today;" though a little later, more wisely, I fancy, he says: "I do not think that I possess any of the qualities of the prophet" (pp. 40, 41, 113).

In a chapter on the proximate causes of the war, the author, basing his assertion on information which he says he has obtained, declares that British foreign policy looked to the establishment of a new domain from Egypt to Persia, thus consolidating the empire (pp. 60, 61); and he traces what to him seem certain steps in the surrounding Germany with enemies who would crush her. In another chapter on Belgian neutrality he repeats statements which have been publicly challenged as inaccurate and false; and a theory in international law which has aroused contempt both here and abroad. In his opinion the disasters which came to Belgium were owing entirely to England and to the Belgians themselves.

A slight performance like this ill deserves so long a notice, except in so far as it may serve as an example of much of Germanist partizan writing. At the worst it appears disingenuous and misleading; at the best a great deal of it seems the result of ignorance, bias, incapacity and haste.

EDWARD RAYMOND TURNER.

Pan-Americanism. A Forecast of the Inevitable Clash Between the United States and Europe's Victor. By ROLAND G. USHER. (New York: The Century Company. 1915.)

Whether or not the author's conclusions are accepted, the subject of his work is one which must of necessity make a special appeal to the interests of the American Republics, North, Central, and South. The close of the war will settle the destinies of Europe only to place those of America in the balance. Professor Usher holds that South America is the prize which will entice England or Germany, whichever is victor in the present world-war, "to challenge our supremacy in the Western Hemisphere." He believes that the non-military character of the people of the United States, their disinclination to arm except for the

greatest reasons, and their entire lack of present interest in conquest—are all inconsistent with the Monroe Doctrine. Our national characteristics and our holding to the Monroe Doctrine, he says “are irreconcilable, and the day has now come when the test is about to be made to discover which of the two is the stronger current of our national life.”

It seems hard to believe that a majority of our people would accept Professor Usher's definition of the Monroe Doctrine. If our national characteristics and the Monroe Doctrine are so utterly irreconcilable it seems strange that it should have played so important a part in our foreign policy, and that it should have shaped so largely our diplomacy in the long years that we have adhered to it. Professor Usher's chapter on the “Expediency of the Monroe Doctrine” is distinctly disappointing. Viewed historically, it is difficult to accept his verdict that the Monroe Doctrine spells aggression, or that it means Pan-Americanism (as he defines that term), expansion, or imperialism. The purposes for which our statesmen took part in its formulation, and the uses to which it has been put, have certainly been largely defensive—if not entirely so. Unless the European war puts the victorious belligerents in a much stronger position than at the opening of hostilities, the Monroe Doctrine will doubtless continue to be upheld at home and at least respected abroad—if not formally recognized.

Professor Usher's definition of Pan-Americanism seems rather broader than the accepted meaning of that term, and seems to carry with it the idea of a rather closer union with South and Central America than one is accustomed to conceive. It seems doubtful whether the difficulties in the way of a strictly defensive union or alliance against European aggression on the part of the American Republics are so unsuperable as he deems them. Certainly recent events, such as the concerted action of the A.B.C. powers and the United States in Mexican affairs, the establishment of banking branch houses in South America under the Federal reserve act, the recent meetings of trade representatives of the American Republics, and the pending treaty with Columbia—may be taken as indications of a growing feeling of mutual interest. While Pan-Americanism as a defensive policy may not be a “fait accompli,” it does not seem to be impossible of realization.

The most disappointing, because the least scientific in its treatment, and because of its tendency to use surmises unsupported by evidence, is the chapter on “Japanese Expansion.” While it would be difficult to disprove the existence of danger to the United States from Japan,

it would be equally hard to support Professor Usher's thesis that we are in danger of invasion from that source. In its general tone this chapter reminds one of certain well known orations on the "Yellow Peril," and the Japanese aggression in Turtle Bay.

The bibliography at the end of the volume will be found useful to those who wish to delve deeper into the subject of Pan-Americanism. It is to be regretted that Professor Usher did not give foot notes citing his authority for some of his statements and conclusions in chapters dealing with such questions as the "Ethics of Expansion" "The Analysis of Pan-Americanism" or the discussion of Japanese expansion. The book is written in the same popular style and with the same journalistic rapidity of movement which characterized the author's earlier work, "Pan-Germanism." The strength of the book lies in its interesting style, its appeal to the popular imagination, and in its general view of the subject; but, paradoxical as it may seem, there too lies its weakness.

JAMES MILLER LEAKE.

Reflections on Violence. By GEORGES SOREL. Trans. by T. E. Hulme. (New York: B. W. Huebsch. 1915. Pp. 229.)

Whatever the future of revolutionary syndicalism in Europe, the movement will at least continue to have interest for the historian as a type of social agitation, based upon novel and distinctive theories, which had attained somewhat formidable proportions at the moment when "*le régime bourgeois*" eventuated in an outbreak of "violence" more atrocious and more widespread than any of which the syndicalist had dreamed. An English version of the principal book of the chief philosopher of the movement is therefore to be welcomed. The translation, it may be said at once, is clear and idiomatic, and for the most part accurate. There are occasional errors, such as the rendering of *moeurs* by "customs" (29, 44, 57), and of *cléricaux* by "clergy" (249). This last makes nonsense of the passage in which it occurs. "Worthy progressives" is an over-translation of *braves gens*.

To be rightly understood the book needs to be read backwards. For it is concerned with two questions, that of the ends to be accomplished by the social revolution, and that of the means by which it can be effectually brought about. The latter question is discussed first and at much greater length; but the spirit of this discussion, and the main premises of it, are sure to be missed by readers who do not bear in mind the ethical ideal of the syndicalist revolution, as set forth in

the concluding chapter on *la morale des producteurs*. It is primarily, though not solely, Sorel's conception of the ends to be accomplished, that prescribes the choice of those means to which he gives the sensational and partially misleading name of "violence."

The moral ideals which inspire Sorel are highly dissimilar to those which have animated most of the older Socialism. His hostility to the existing *régime* is not chiefly due to a demand for justice in the distribution of the produce of industry, nor to a humanitarian sympathy with the victims of capitalistic 'exploitation,' nor to a sense of the waste and disorder involved in the competitive system. The *morale des producteurs* is a sort of 'gospel of work.' Its ideal will be realized only when productive industry is freely and joyously carried on by every man for its own sake, with no desire for compensatory sugar-plums, in the form either of material rewards or the praise of others. The new social order is to be one in which men have become capable of finding their chief satisfaction in the activity that is inevitably their destiny, and in which life is lived simply, unaffectedly, and with a certain austerity. "The striving towards perfection which manifests itself in spite of the absence of any personal, immediate and proportional reward, constitutes the secret virtue that assures the continued progress of the world." The syndicalist millennium is to give this virtue constant play in the daily business of every man.

In order to bring about this consummation two things are chiefly necessary. The first is that the working class shall be kept undebauched by the ideals and ambitions of the existing *bourgeois* society. Among the workers, and among them alone, is to be found the germ of that "virtue which has power to save civilization—a virtue which middle-class intellectuals are incapable of understanding" (267). Hence the necessity for avoiding the methods of parliamentary socialism—which merely have the effect of robbing the proletariat of its leaders, by exposing them to the corrupting influence of middle-class associations. Hence also the necessity for "violence" i.e., for frequent strikes, undertaken not for the sake of gaining specific concessions, but to prevent the *rapprochement* of the two classes and the consequent infection of the workers with the base and vulgar standards dominant among the *bourgeoisie*. But a second requisite, for syndicalism, as for every great popular movement, is that it shall be animated by a "myth"—by a vivid and stirring image of some single, near-by, divine, event, in which every participant in the movement can picture himself as having a part. The "myth" which thus functions in syndicalism is

that of the general strike. "Strikes have engendered in the proletariat the noblest, deepest and most moving sentiments that they possess; the general strike groups them all into a coördinated picture, and by bringing them together, gives to each its maximum of intensity" (137). It is not the practicability of the general strike that Sorel assets, but only the efficacy of the "idea" of it. A "myth must be judged as a means of acting on the present; any attempt to discuss how far it can be taken literally, as future history, is devoid of sense" (135).

The most crushing comment upon the book has been, unwittingly, uttered by Sorel himself, when he remarks that "the revolution has no place for intellectuals who have embraced the profession of thinking for the proletariat." His own (former) profession is there defined with precision. He is an intellectual of the intellectuals—all the more so in that he is, after the present Bergsonian fashion, an "anti-intellectualist"—who seeks to save the unlettered classes from the depraving influence of middle class culture by offering them a large and learned volume of social philosophy, heavily buttressed with footnotes. He is an avowed "pessimist" who sets out to inflame the popular mind with unconquerable hopes, by preaching a "myth" concerning which his own scepticism is unconcealed. The lofty, austere, and almost ascetic, moral ideals which he looks to the revolutionary proletariat to realize, are not such as the proletariat, left to itself, has ever shown much disposition to pursue. The very glamor which the working-class soul possesses in his eyes is a typical *bourgeois* illusion. One may well doubt whether Sorel has ever genuinely expressed the real temper of the movement which he has sought to interpret and to promote. And it is not at all surprising that he has of late looked rather towards royalism and Catholicism and a return to the ancient traditions of French culture, for a more congenial expression of that distaste for the vulgarity of middle-class ideals, and that contempt for the pedestrian methods of the mere 'intellect,' which first inspired his syndicalist philosophy.

A. O. LOVEJOY.

The Enforcement of Decrees in Equity. By CHARLES ANDREWS HUSTON. Harvard Studies in Jurisprudence, No. 1. (Cambridge, Mass.: Harvard University Press. London: Humphrey Milford. Pp. xxi, 189.)

This essay is a plea for a wider operation *in rem* for decrees in equity, in line with the modern tendency to enlarge the powers of all courts

to grant, where practicable, specific rather than compensatory or substitutional relief when legal rights are violated.

After stating his thesis and outlining the theoretical argument in support of it, the author shows that there are now statutes in force in England and in most of the States in this country empowering courts of equity to give a *real* effect to their decrees in certain cases by directly appointing officers to execute conveyances upon the failure of the parties to do so. These statutes are collected in the appendix. Next, he traces the parallel but more extensive progress of the Roman law from substitutional to specific relief and its enforcement by "natural execution," the advantages of which are fully recognized and preserved in the modern civil law systems. Recurring to the law of this country the author points out the need for legislation extending the power of equity to grant relief when the property in litigation is within the territorial jurisdiction of the court, but the defendant is not; notably in suits to enforce contracts to convey real estate, action to remove clouds on titles, and interpleader proceedings. He then sketches the development of equitable procedure *in rem*, and closes with a discussion of the growing trend of modern law toward the recognition of certain equitable rights—particularly those of *cestui que* trust—as being genuine rights *in rem*, rather than the purely personal obligations they were originally considered.

The author's treatment is interesting and able, and his conclusions lead in the direction of substantial and practical reforms in equity procedure.

J. WALLACE BRYAN.

The Reconciliation of Government with Liberty. By JOHN W. BURGESS. (New York: Charles Scribner's Sons. 1915. Pp. xix, 394.)

It is an almost wholly unsuccessful endeavor that Professor Burgess makes to discover political systems, past or present, in which government has been reconciled with liberty. One is, however, not surprised at this, or at being told that "it has been the search of the ages to find," and "the travail of the ages to construct," such a "mellennial equilibrium," when he learns the "three fundamental factors" that the author considers indispensable to guard against despotism or anarchy: "first, the organization of the sovereign power, the state, back of and independent of the government; second, the delineation by the sovereign

of the realm of individual immunity against governmental power; and third, the construction by the sovereign of the organs and procedure for protecting this realm of Individual Immunity against the encroachments of Government."

Asia, Africa, and Europe have failed to furnish any such millennial political system, but the story of their "travail" consumes three-fourths of the book. Switzerland is the only one of the states of Europe which has regarded the first of these axioms of "sound political science;" in delineating a sphere of individual liberty, modern European systems are fairly satisfactory, but this does not save them from condemnation on the ground that they do not meet the third requirement: the individual is not sufficiently protected against the law-making body. In some cases, there should be "a greater independence and even a certain jealousy" between the executive and legislature, instead of union under parliamentary government; but the great defect is that the trend is toward a unicameral system, "however scrupulously the form of the bicameral system may be preserved." The present constitutions of Europe are for this reason unsatisfactory; liberty is secured "by the benevolence of government and not by constitutional right."

But "the future of all the Americas is never to be despaired of." There is "one real state," the Argentine Republic, which is "the light and hope of South America" in solving the world problem of reconciliation, and there is—or at last there was, until 1898—"one real state in North America," the war amendments having sufficiently extended the realm of individual liberty. But even before this there were certain defects. Equal representation in the Senate is excepted from the operation of the sovereign power, and constitutional amendments should be by the method which is, "from the point of view of Political Science the ideal one" initiation by a national convention with ratification by conventions in three fourths of the States of the Union. Instead, we have had the amendments initiated by Congress, and ratified "by the legislatures of two-thirds [*sic*] of the States."

Nevertheless, until 1898, ours was "the most perfect system of civil liberty." But this is true no longer. The decisions of the United States supreme court in the insular cases have been destructive of liberty; the popular election of United States senators has changed the conservative composition of Congress, and the income tax amendment gives the government unlimited power over property.

It is evident, I think, from this exposition, that Professor Burgess differs from the great majority of political theorists, and so only one

comment need be ventured. His first "fundamental factor" rests on the same confusion of terms that he made in his *Political Science and Constitutional Law*: it is improper to speak of the "State" as organized either within or without the "government," for the latter is simply the machinery of the "State." This confusion accounts for the futility of the method adopted in searching for the "millennial political system." Whether government and liberty are reconciled may be ascertained only by an examination of what the government does—whether the laws passed encroach on the liberty of the citizen. What this volume really attempts is to discover whether the citizen is protected against government by the State.

LINDSAY ROGERS.

Undercurrents in American Politics. By A. T. HADLEY. (New Haven, Conn.: Yale University Press. 1915. Pp. 185.)

The Liberty of Citizenship. By S. W. MCCALL. (New Haven, Conn.: Yale University Press. 1915. Pp. 134.)

These volumes consist of series of lectures, those of President Hadley having been delivered at Oxford University, England, and at the University of Virginia, while those of Governor McCall were delivered on the Dodge Foundation at Yale University. The Oxford lectures of President Hadley have to do with the general subject of "property and democracy," while his Virginia lectures are concerned with political methods. In the first series of lectures, the author traces the interaction of political and economic tendencies in our history, and develops an economic interpretation of the Constitution. He holds that the incorporation in that instrument of guaranties to property owners was not the result of a conspiracy, but was more or less unwitting. He points out that "where every man of energy and enterprise expected to become a property owner, the community was not inclined to favor legislation that restricted the rights of property" (p. 76). He observes also that a solution of the question of state control will not be reached until the public demand for state regulation of industry and for trained civil service go hand in hand. In the second series of lectures, President Hadley considers the perversion of democratic government through the operation of party machinery. He admits that the results of party action are both good and bad, but is inclined to think that the bad predominates. In continuation he considers some of the so-called remedies

for the perversion of democratic government through party action, such as the direct primary the initiative and referendum, and the recall, but holds that these are inadequate "because it is impossible to make *unorganized* public opinion effective in practical politics" (p. 149).

The lectures of Governor McCall exhibit the traditional attitude of the old-time individualist. In opposing state socialism, he assumes that because public ownership, as thus far adopted, has not been a success in this country, its further extension would be still more disastrous. He assumes, without proof, a necessary incompatibility between individualism and collectivism. In discussing the Constitution, he adopts, in the main, the traditional laudatory, uncritical view. These lectures, however, as well as those of President Hadley, are well worth a circulation wider than the audiences to which they were originally delivered.

J. M. MATHEWS.

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST

JOHN A. DORNEY

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UNITED STATES

Address of the President of the United States delivered at a joint session of the two Houses of Congress, December 7, 1915. 1915. 18 p. 8°.

American Historical Association, Annual Report of the, for the year 1913. In two volumes. Vol. 1. 1915. 438 p. 8°. House doc. 1697.

——— Vol. 1. Papers of James A. Bayard, 1796-1815. Edited by Elizabeth Donnan. 1915. 539 p. 8°. House doc. 1697.

The Balkan Wars. Being a series of lectures delivered at the Army Service Schools, Fort Leavenworth, Kansas, by Clyde Sinclair Ford, Major Medical Corps, U. S. A. 1915. 150 p. 12°. *War Dept.*

Changes in Senate Rules. Standing rules for conducting business in the Senate of the United States showing certain amendments intended to be proposed by Senator Robert L. Owen, of Oklahoma . . . 1915. 24 p. 8°. Senate document no. 5. 64th Cong. 1st Sess.

Citizenship, Registration of American Citizens, Issuance of Passports, Etc. Compilation of certain departmental circulars relating to. 1915. 88 p. 8°. *Department of State.*

Correspondence with a Foreign Government, and acceptance of a commission to serve a foreign state in war, memorandum on the history and scope of the laws prohibiting. Section 5 and 9, Federal Penal Code by Charles Warren, Assistant Attorney General. 1915. 27 p. 8°. *Department of Justice.*

Decisions of Courts Affecting Labor, 1914. 1915. 346 p. 8°. House doc. 1678. Bulletin whole no. 169. (Labor Laws of the U. S. series no. 6.) *Department of Labor, Bureau of Labor Statistics.*

Diplomatic Correspondence with Belligerent Governments Relating to Neutral Rights and Duties. 1915. 198 p. fol. *State Department.*

Five Per Cent Case . . . A copy of all evidence introduced and all exhibits received at hearings before the Interstate Commerce Commission in Docket no. 5360, "Revenues of Rail Carriers in Official Classification Territory" and investigation and suspension Docket no. 333 entitled "Rate Increases in Official Classification Territory." In 8 vols., index in vol. 8. 1915. 8°. *Senate Committee on Interstate Commerce.*

Contains testimony, diagrams, statistical tables and maps. Total pagination 6949 p.

General Peace Treaties of 1914. All ratified and made public. 1915. Various paging. 8°. *Department of State.*

Note: Collection of confidential executive documents of 63d Congress.

The National Bank Act as Amended. The Federal Reserve act and other laws relating to national banks. . . . July 1, 1915. 1915. 285 p. 8°. *Treasury Department, Comptroller of the Currency.*

A Naval Auxiliary Merchant Marine. Speech of Hon. William G. McAdoo, Secretary of the Treasury, delivered before the Chamber of Commerce of Indianapolis, Ind., on October 13, 1915 . . . 1915. 24 p. 8°. Senate document no. 4. 64th Cong. 1st Sess.

Navigation Laws of the United States, 1915. 1915. 585 p. 8°. *Department of Commerce, Bureau of Navigation.*

Neutral Shipping. Letter of the Secretary of State to the British Government, dated October 21, 1915, remonstrating against interference with American cargoes consigned to neutral ports. File no. 763. 72112. [1915.] 26 p. fol.

Parcel Post Convention between the United States and the Argentine Republic. 1915. 13 p. 8°. *Post Office Department.*

Principal Navies of the World. Information concerning some of the . . . 1915. 28 p. 8°. *Office of Naval Intelligence, Navy Department.*

Proposed Military Policy, An Outline of the. 1915. 8 p. 8°. *War Department.*

Proposed plan of secretary of war providing for a change in our present military policy.

Rural Credits, Bills Introduced in the United States Senate and the House of Representatives during the Sixty-third Congress relative to . . . 1915. Various paging [1000 p.] 4°. *Senate, Secretary to.*

Note: Contains a bound collection of all bills on this subject as introduced.

The Seaman's Act. General Rules and Regulations prescribed by the Board of Supervising Inspectors under provisions of the act of March 4, 1915, as amended at board meeting of January, 1915, and approved by the Secretary of Commerce effective on and after November 4, 1915. Rule III, Ocean and coastwise, and Rule III, Lakes, Bays, and Sounds. Edition: November 4, 1915. 1915. 71 p. 8°. House document no. 125. 64th Cong., 1st Sess.

Shipping Casualties. (Loss of the steamship *Falaba*.) Report of a formal investigation into the circumstances attending the foundering on 28th March of the British steamship *Falaba*, of Liverpool, . . . 1915. 11 p. fol.

South American Countries, Financial Developments in. By William H. Lough. 1915. 42 p. 8°. Special Agents Series no. 103. *Department of Commerce, Bureau of Foreign and Domestic Commerce.*

The Territory of Alaska, general information regarding. 1915. 36 p. 8°. *Department of the Interior, Office of the Secretary.*

Uniformity of Laws Governing the Establishment and Regulation of Corporations and Joint Stock Companies in the American Republics. Report of Prof. Roscoe Pound. Submitted to Hon. William G. McAdoo, Chairman, Pan American Financial Conference, 1915, 1915. 13 p. 8°. *International High Commission.*

CALIFORNIA

Labor Laws of California. Compiled by John P. McLaughlin, Commissioner. 1915. 252 p. 16°. *Bureau of Labor Statistics.*

Primary Election Laws of California, together with annotations and analysis by the author of the bills. 1. Direct primary law, for August election (the so-

called "Non-partisan law"). 2. Presidential primary act, for May election. 1915. 64 p. 8°. *Secretary of State*.

GEORGIA

Opinion in Case of the State vs. Leo Frank. Supplement to the message of the governor to the General Assembly of Georgia. 1915. 43 p. 8°.

IOWA

The Constitution of the State of Iowa and Amendments from 1857 to 1914, with historical introduction and index by Benj. F. Shambaugh. 1915. 131 p. 32°. *Historical Society*.

The Iowa Official Register for the Years 1915-16. . . . 1915. 918 p. 8°. *Secretary of State*.

MISSOURI

Workmen's Compensation and Employers' Liability Problem. . . . A prelude and supplementary to the 1914 Red Book. [1915] 40 p. 8°. *Bureau of Labor Statistics*.

NEW HAMPSHIRE

Manual for the Use of the General Court. . . . 1915. 336 p. 16°. *Secretary of State*.

NEW YORK

City and County Governments. The relation of the state to the city school system. . . . 1915. Various paging. 8°. *Constitutional Convention Commission*.

Note: N. Y. Constitutional Convention Commission established by Laws of 1914, to collect, compile and print information and data for the Constitutional Convention of 1915.

The Constitution and Government of the State of New York. An appraisal . . . 1915. 246 p. 8°. *Constitutional Convention Commission*.

County Government. Pt. 1. Papers on special topics. Pt. 2. Organization of Westchester County. Pt. 3. Expenses of education. Pt. 4. County Finance. 1915. 613 p. 8°. *Constitutional Convention Commission*.

The Government of the City of New York. 1915. . . . 260 p. 8°. *Constitutional Convention Commission*.

Note: A collection of addresses and discussions presented at a series of eleven lecture conferences held under the auspices of the Academy of Political Science in the city of New York with the coöperation of the Bureau of Municipal Research, the Institute of Arts and Sciences of Columbia University, and a citizens committee, April 7 to 30, 1915.

Government of the State of New York. A description of its organization and functions. Prepared for the . . . Constitutional Convention Commission by the New York State Department of Efficiency and Economy and New York Bureau of Municipal Research. . . . 1915. 768 p. 8°. *Constitutional Convention Commission*.

Index Digest of State Constitutions. Prepared for the New York State Constitutional Convention Commission by the legislative drafting research fund

of Columbia University. 1915. 1546 p. 8°. *Constitutional Convention Commission.*

New York State Constitution. Annotated. Pt. 1. Text in force April 6, 1915, with notes. Pt. 2. Amendments adopted and proposed, 1895-1914. Prepared under the direction of the New York State Library. 1915. 376 p. 8°. *Constitutional Convention Commission.*

Proposed Constitution of the State of New York as Amended and Revised. Adopted by the convention, September 10, 1915, with explanatory abstracts and form for submission to the voters. *Secretary of State.*

The Revision of the State Constitution. A collection of papers, addresses and discussions presented at the annual meeting of the Academy of Political Science in the city of New York, Nov. 19 and 20, 1914. Pt. 1 and 2. 1915. 2 v. 8°. *Constitutional Convention Commission.*

TEXAS

Legislative Manual. Thirty-fourth Legislature . . . 1915. 256 p. 8°.

Penitentiary Investigating Committee. A record of evidence and statements before the . . . committee appointed by the thirty-third legislature of Texas. 428 p. 8°.

VIRGINIA

Taxation in Virginia, A Brief History of. By Edgar Sydenstricker. 1915. 66 p. 8°. *Legislative Reference Bureau.*

WISCONSIN

The Wisconsin Blue Book 1915 . . . 1915. 568 p. 8°. *Industrial Commission.*

AUSTRALIA

Biographical Handbook and Record of Elections for the Parliament of the Commonwealth . . . 1915. 357 p. 8°. *Parliament, Librarian.*

Information covers period 1901-15.

Report on the Business Management of the Postmaster-General's Department. . . . By Robert McC. Anderson. [1915] 41 p. fol.

AUSTRIA

Diplomatic Documents Concerning the Relations of Austria-Hungary with Italy from July 20th, 1914, to May 23d, 1915. [1915] 190 p. 8°. *Ministry of Foreign Affairs.*

BELGIUM

Correspondance Diplomatique relative a la Guerre de 1914. (24 Juillet-29 Août.) Paris. 1914. 56 p. 8°. *Ministre des Affaires Etrangères.*

Correspondance Diplomatique relative a la Guerre de 1914-1915. II. Paris. 136 p. 8°. *Ministre des Affaires Etrangères.*

L'Action de L'Armée Belge pour. La Défense du Pays et le Respect de sa-

Neutralité. Rapport due Commandement de l'armée (période du 31 Juillet au 31 Décembre 1914). Paris. 97 p. Oblong 8°.

Note: Contains maps.

La Neutralité de la Belgique . . . Paris. Nancy. 1915. 165 p. 16°. *Ministre d'État.*

La Violation du Droit des gens en Belgique. . . . Paris. Nancy. 1915. 167 p. 8°. *Ministre D'État.*

Note: 1. Rapports officiels de la Commission d'enquête sur la violation des règles du droit des gens, des lois et des coutumes de la guerre.

2. Extraits de la lettre pastorale de S. Em. de Cardinal Mercier archevêque de Malines.

CANADA

The Canada Year Book 1914. 1915. 698 p. 8°. *Trade and Commerce Department.*

Note: Concise compendium of general information of historical and statistical nature.

European War. Copies of proclamations, orders in council and documents relating to the. First supplement. Ottawa. 1915. 350 p. 8°. *Secretary of State of Canada.*

War Prices in Canada. A review of the prices situation since the outbreak of war. Some interesting tabular statements. (Reprinted from the Labour Gazette. August, 1915.) [1915.] 14 p. 8°. *Department of Labour.*

GREAT BRITAIN

Alleged German Outrages. Evidence and documents laid before the committee on (Appendix to the report which was published separately) . . . 1915. 296 p. 8°.

British and Foreign State Papers 1911. Vol. CIV. . . . 1915. 1074 p. 8°. *Foreign Office.*

Clerical and Commercial Employments Committee. Report . . . 1915. 12 p. fol. [Cd. 8110.] Price 1½ d. *Home Office.*

Note: Committee created "to consider the conditions of clerical and commercial employment with a view to advising what steps should be taken, by the employment of women or otherwise, to replace men withdrawn for service in the military forces."

Defence of the Realm Acts and Regulations Passed and Made to July 31, 1915 . . . Edited by Alexander Pulling, C. B. . . . Published by Authority. 1915. 84 p. 8°. Price 1s.

Contents 1. The defence of the realm acts, as passed, with notes. 2. The defence of the realm regulations, printed in consolidated form, as provided by order in council, with notes. 3. The defence of the realm (liquor control) regulations, 1915, and orders in council applying the same as passed with notes. Analytical index to acts, regulations, and introductory and other notes.

Defence of the Realm (Liquor Control) Regulations, 1915. First report of the central control board (Liquor Traffic) appointed under the Defence of the Realm (Amendment) (No. 3) Act, 1915. 1915. 6 p. fol. [Cd. 8117.] Price 1 d.

East India (Military). Despatches Regarding Operations in the Persian Gulf and in Mesopotamia. 1915. 54 p. fol. [Cd. 8074.] Price 5½ d. *War Office.*

European War. Correspondence respecting military operations against German possessions in the Western Pacific. 1915. 26 p. fol. [Cd. 7975] Price 3d. *Foreign Office.*

Execution of Miss Cavell at Brussels. Correspondence with the United States Ambassador respecting the. 1915. 15 p. fol. Miscellaneous no. 17. (1915.) [Cd. 8013.] Price 1d. *Foreign Office.*

Italian Decrees Relative to Enemy Merchant Vessels, together with the Italian Naval Prize Regulations. 1915. 7 p. fol. [Cd. 8104.] Price 1d. *Foreign Office.*

Prisoners of War in England and Germany during the first eight months of the war, The treatment of. 1915. 36 p. 8°. *Foreign Office.*

Production of Food in England and Wales, Final Report of the Departmental Committee appointed by the President of the Board of Agriculture and Fisheries to consider the. 1915. 11 p. fol. [Cd. 8095.] price 1½d. *Board of Agriculture and Fisheries.*

Production of Food in Scotland on the assumption that the war may be prolonged beyond the harvest of 1916, Report by the Departmental Committee appointed to inquire into the question of maintaining and if possible increasing the present. 1915. 16 p. fol. Price 2d. *Scotland, Bd. of Agriculture.*

Prohibitions of Export in Force in the United Kingdom and Certain Allied and Neutral Countries. 1915. 74 p. 8°. *Board of Trade.*

Note: Supplement to Board of Trade Journal, July 29, 1915.

Retrenchment in the Public Expenditure, First report of the Committee on. 1915. 6 p. fol. [Cd. 8068.] Price 1d. *Treasury.*

Statistical Abstract for the United Kingdom in each of the last fifteen years from 1900-1914. Sixty-second number. 1915. 431 p. 8°. [Cd. 8128.] Price 1s. 9d. *Board of Trade.*

ITALY

Diplomatic Documents Submitted to the Italian Parliament. . . Austria-Hungary Session of 20th May, 1915. [1915] 96 p. 8°. *Minister for Foreign Affairs.*

Note: Published for the Royal Italian Embassy in London by Hodder and Stoughton, London, New York, Toronto.

Documenti Diplomatici presentati al Parlamento Italiano. . . Austria-Ungheria. . . Roma. 1915 66 p. 4°. *Ministro degli Affari Esteri.*

Note: Atti Parlamentari, Leg. 24, Sess. 1913-15. Camera dei Deputati N. 32. Documenti.

NORWAY

Kongeriget Norges Grundlor gruen i Rigsforsamburgen paa Eidsvold den 17 de Mai 1814. Med senere ændringer og tillæg indtil 17 de Mai 1914. [Kristiania] [1914] 111 p. 8°. *Stortiget, Konstitutionskomiteen.*

Stortinget og Statsraadet 1814-1914. Efter offentlig foranstaltning utgit af Tallak Lindstøl.

——— 1ste Bind. Biografier. 1ste Del. A-K. Kristiania 1914. 520 p. 4°.

——— 2den Del. L-Ź Samt Tillæg. Kristiania. 1914. 521-1021 p. 4°.

Stortinget og Statsraadet 1814-1914. 2det. Bind. De Enkelte Storting og Statsraader. 1ste. Del. 1814-1885. Kristiania. 1914. 452 p. 4°.

——— 2den. Del. 1886-1914. Kristiania. 1915. 453-965 p. 4°.

QUEENSLAND

A. B. C. of Queensland Statistics. 1915. Compiled by N. J. McLeod . . .
1915. 42 p. 8°. *Statistical Department.*

SWITZERLAND

Staats-Kalender der Schweizerischen Eidgenossenschaft. Annuaire de la Confédération Suisse. 1915. Bümpliz. 1915. 84 p. 8°.

INDEX TO RECENT LITERATURE—BOOKS AND PERIODICALS

COLONIES

Books

Camilli, Bertrand. La représentation des indigènes en Indo-Chine. Toulouse: J. Fournier. 1914. Pp. 196.

Colomb, Jean. Étude sur le régime financier du Maroc. Paris: E. Larose. 1914. Pp. 285.

Demay, Jules. L'organisation des communes en Tunisie. Tunis: Soc. Anonyme de l'Imp. Rapide. 1915. Pp. 173.

Foster, W. The English factories in India. New York: Oxford Univ. Press.

Fourrier, Henri. La colonisation officielle et les concessions de terres domaniales en Algérie. Paris: Giard et Brière. 1915. Pp. 126.

Garcin, Emile. La colonisation officielle en Algérie. Alger: A. Jourdan. 1913. Pp. 134.

Lebre, Gaston. De l'établissement du protectorat de la France au Maroc. Paris: A. Pedone. 1914. Pp. 216.

Marneur, François. L'indigénat en Algérie. Paris: Léon Tenin. 1914. Pp. 180.

Matthai, John. Village government in British India, with a preface by Sidney Webb. London: Unwin. Pp. 231.

Meunier, Pierre. Organisation et fonctionnement de la justice indigène en Afrique Occidentale Française. Saint-Brieuc. 1913. Pp. 324.

Muir, R. The making of British India. New York: Longmans.

Wrazall, Peter. An abridgment of the Indian affairs. London: H. Milford.

Zohny, A. E. S. L'article 11 (paragraphe 2 et 3) du règlement d'organisation judiciaire pour des procès mixtes en Égypte. Lyon: J. Desvigne. 1914. Pp. 759.

Articles in Periodicals

Morocco. Die Grundlagen der Morokkofrage. *George Kampffmeyer.* Zeits. f. Pol. VIII, 3 and 4. 1915.

Morocco. La réorganisation de l'administration des villes du Maroc par le protectorat. *L. Holtz.* Rev. d. Sci. Pol. 15 Déc. 1915.

CONSTITUTIONAL LAW

Books

Army Officer. Courts-martial. London: Stevens and Haynes. Pp. 48.

Barisien, Pierre. Le parlement et les traités. Paris: A. Rousseau. 1913. Pp. 160.

Baumgart, M. Les garanties juridictionnelles du droit public moderne. Paris: Léon Tenin. 1914. Pp. 152.

Biot, Georges. Le home rule Irlandais. Paris: Giard et Brière. 1914. Pp. 183.

Boisseau, Robert. Des jugements tendant à établir, reconstituer, rectifier ou annuler les actes de l'état civil. Paris: A. Rousseau. 1914. Pp.

Bowier, Léon. La représentation des intérêts professionnels dans les assemblées politiques. Paris: Arthur Rousseau. 1914. Pp. 162.

Brette, A. Recueil de documents relatifs à la convocation des états généraux de 1789. Paris: Impr. Nationale.

Cavan, Y. La théorie du recours parallèle devant la conseil d'état. Paris: Léon Tenin. 1914. Pp. 150.

Clark, F. B. The constitutional doctrines of Justice Harlan. Baltimore: Johns Hopkins Press. 1915.

Couyba, C. M. Le Parlement français. Paris: H. Laurens. Pp. iii, 204.

Derumaux, Marcel. Étude historique sur l'extraterritorialité de la loi pénale. Paris: Rousseau et Cie. 1915. Pp. 186.

Desfougères, Henri. Le contrôle judiciaire de la constitutionnalité de lois. Paris: A. Rousseau. 1913. Pp. 124.

Du Molay, Jean le Couteulx. Les droits politiques de la femme. Paris: Giard et Brière. 1913. Pp. 304.

Flandin, Pierre-Étienne. La question de la représentation proportionnelle en Angleterre et dans les colonies Anglaises. Le vote transférable. Paris: Lib. Dalloz. 1914. Pp. 152.

Haring, J. B. Grundzüge des katholischen Kirchenrechtes. Graz: U. Moser. 1916. Pp. xii, 912.

Hauser, F. Die Reichs-Finanzreform u. die Probleme der Reform des schweizerischen Bundeshaushalts. Zürich: Grutlivereins. 1915. Pp. xi, 148.

Hautière, P. Les dépenses du ministère de la guerre. Paris: Jouve et Cie. 1914. Pp. 293.

Hugot-Derville, Renè. Le principe hiérarchique dans l'administration Française. Paris: Léon Tenin. 1913. Pp. 239.

Jouëllié, Henri. La situation juridique de l'Église Catholique en Prusse. Montpellier: Firmin et Montane. 1913. Pp. 215.

Kellersohn, Maurice. Des effets de l'annulation pour excès de pouvoir. Bordeaux: Y. Cadoret. 1915. Pp. 283.

Krüger, F. K. Governments and politics of the German Empire. Yonkers, New York: World Book Co.

Lanessan, J. L. de. L'Empire allemand. Paris: Alcan.

Lebbé-Meilhan, Pierre. La condition juridique de l'Eglise Catholique dans le droit public français. Paris: A. Rousseau. 1913. Pp. 16.

Lobstein, René. Les origines du droit dynastique Allemand. Lyon: Lib. Georg. 1914. Pp. 84.

Macy, J., and Gannaway, J. W. Comparative free government. New York: Macmillan.

Petitjean, Théodore. La représentation proportionnelle devant les chambres Françaises. Paris: Léon Tenin. 1915. Pp. 288.

Plehn, C. Government finance in the United States. Chicago: McClurg.

Pratt, Sisson C. Military law: its procedure and practice. 19th ed. London: K. Paul.

Renard, A. Jean. Du controle des services publics et de l'application des lois pénales. Montpellier: Firmin et Montane. 1914. Pp. 435.

Roubier, Paul. Influence du changement des circonstances sur les contrats de droit public. Paris: A. Rousseau. 1914. Pp. 167.

Rucklin, René. Les réquisitions militaires. Paris: Rousseau et Cie. 1915. Pp. 264.

Seymour, C. Electoral reform in England and Wales. New Haven: Yale Univ. Press.

Sharfmann, I. L. Railway regulation. Chicago: La Salle Extension Univ.

Tai, Tsien. Le pouvoir législatif en Chine. Paris: A. Pedone. 1914. Pp. 195.

Teissier, Georges. De l'exercice du droit de vote. Saint-Étienne: "La Tribune." 1913. Pp. xvi. 158.

Wavell Ridges, Ed. Constitutional law of England. London: Stevens. 1915. Pp. xxiv, 575.

Articles in Periodicals

Act of State. Der fehlerhafte Staatsakt in der freiwilligen Gerichtsbarkeit. *Eugen Josef.* Archiv d. Öffent. Rechts. XXXIV, 3 and 4. 1915.

Administrative Law. Judicial control of administrative and legislative acts in France. *James W. Garner.* Am. Pol. Sci. Rev. Nov., 1915.

Common Carriers. The exercise of constitutional powers by common carriers. *John B. Daish.* Yale Law Jour. Jan., 1916.

Congress. Le régime personnel aux États-Unis les ministres devant le congrès. *Perry Belmont.* Rev. Pol. et Par. 10 Août. 1915.

Constitution. The early history of the tradition of the constitution. *Frank I. Schechter.* Am. Pol. Sci. Rev. Nov., 1915.

Constitution. Rejuvenating the constitution. *Charles Zueblin.* Yale Law Jour. Jan., 1916.

Constitutional Change. Constitutional change without review. *Joseph H. Choate, Jr.* N. Am. Rev. Jan., 1916.

Government. Zum Begriff des Staatsorgans und seiner Tätigkeit. *Bruno Beyer.* Archiv. d. Öffent. Rechts. XXXIV, 3 and 4. 1915.

Japan. Japan under her new Emperor. *St. Nichol Singh.* Contemp. Rev. Dec., 1915.

Martial Law. Qualified martial law, a legislative proposal. *Henry Winthrop Ballantine.* Mich. Law Rev. Dec. 1915., and Jan., 1916.

Parliamentary Mandate. Zur juristischen Natur des Verfahrens bei Prüfung parlamentarischer Mandate. *Hugo Molitor.* Archiv d. Öffent. Rechts. XXXIV, 3 and 4. 1915.

Postal Power. The power of the States to interfere with the mails. *Lindsay Rogers.* Va. Law Rev. Nov., 1915.

Presence of Defendant. Presence of the defendant at rendition of the verdict in felony cases. *G. B. Goldin.* Col. Law Rev. Jan., 1916.

Railroads. A bill for the nationalization of railroads. *William W. Cook.* Mich. Law Rev. Nov., 1915.

Railway Regulation. What is the matter with railway regulation? *Samuel O. Dunn.* N. Am. Rev. Nov., 1915.

Railways. Le Relèvement des Tarifs des Chemins de fer aux États-Unis. *Marcel Peschaud.* Rev. Pol. et Par. 10 Juil. 1915.

Rate Regulation. The United States supreme court and rate regulation. (Concluded). *Douglass D. Storey.* Pa. Law Rev. Jan., 1916.

Religious Liberty. Religious liberty in American law. *Carl Zollmann.* Ill. Law Rev. Oct., 1915.

Right to Sell. The right to refuse to sell. *Rome G. Brown.* Yale Law Jour. Jan., 1916.

Switzerland. Les étrangers en Suisse. *William Martin.* Rev. Pol. et Par. 10 Nov. 1915.

Unconditional Law. Back to the constitution. *Walter Clark.* Va. Law Rev. Dec., 1915.

Vice Presidency. Our constitutional fifth wheel. *Rion McKissock.* Va. Law Rev. Dec., 1915.

Virginia Debt. The Virginia debt controversy. *J. G. Randall.* Pol. Sci. Quart. Dec., 1915.

Webb-Kenyon Act. Unlawful possession of intoxicating liquors and the Webb-Kenyon act. *Lindsay Rogers.* Col. Law Rev. Jan., 1916.

Workmen's Compensation. Important constitutional questions, new in form, raised by the Texas workmen's compensation act. *James Harrington Boyd.* Yale Law Jour. Dec., 1915.

INTERNATIONAL LAW AND DIPLOMACY

Books

Addams, J., and others. Women at the Hague: the international congress of women and its results. New York: Macmillan.

Albin, Pierre. La guerre allemande D'Agadir à Sarajevo (1911-1914). Paris: Alcan.

Alexinski, G. La Russie et la guerre. Paris: A. Colin. 1915.

Balkanicus. Aspirations of Bulgaria. Translated from the Serbian of Balkanicus. London: Simpkin. Pp. 288.

Baudez, Marcel. Essai sur la condition juridique des étrangers en Chine. Paris: A. Pedone. 1913. Pp. 360.

Bergson, H. The meaning of the war. New York: Macmillan.

Bergstrasser, L. Die diplomatischen Kämpfe vor Kriegsausbruch. München: R. Oldenbourg. 1915. Pp. vi, 104.

Beyens, Baron. L'Allemagne avant la guerre. Les Causes et les Responsabilités. Bruxelles et Paris: V. Van Oest et Cie. 1915. Pp. xii, 364.

Bitterauf, E. Die deutsche politik u. die Entstehung des Krieges. München: E. D. Beck. 1915. Pp. vii, 202.

Blondel, G. La doctrine pangermaniste. Paris: Chapelot.

Bordman, M. T. Under the red cross flag at home and abroad. Philadelphia: Lippincott.

- Bourbon, Sixte de.* Le traité d'Utrecht et les lois fondamentales du Royaume. Paris: E. Champion. 1914. Pp. 341.
- Bourgin, H.* Le militarisme allemand. Paris: Félix Alcan. 1915. Pp. 137.
- Brereton, Cloudesley.* Que est responsable? La guerre européenne, ses causes et ses sanctions. Paris: Alcan.
- British statesman.* How diplomats make war. New York: Huebsch.
- Carles, Fernand.* La France et l'Islam. Toulouse: Vnt Rivière, Lib.-Ed. 1915. Pp. 214.
- Chesnais, P. G. La.* The socialist party in the Reichstag and the declaration of war. London: Unwin. Pp. 128.
- Claes, Jules.* The German mole. A study of the art of peaceful concentration, with an introduction by J. Holland Rose. London: Bell. Pp. 158.
- Clements, P. H.* The Boxer rebellion. New York: Columbia Univ. Press.
- Cole, G. D. H.* Labour in war time. London: Bell.
- Collman, C. A.* The war plotters. New York: Fatherland Corporation.
- Colombos, C. J.* Le tunnel sous la Manche et le droit international. Paris: A. Rousseau. 1915. Pp. 116.
- Conway, M.* The crowd in peace and war. New York: Longmans.
- Crile, G. W.* A mechanistic view of war and peace. New York: Macmillan.
- Cumin, Louis.* La question du chemin de fer de Bagdad. Brignais: Imp. d. l'École Professionnelle de Saeynu. 1913. Pp. 357.
- Dalloz,* Guerre de 1914. Documents officiels. Textes législatifs et réglementaires. Cinquième volume. Paris: E. Desfossés. 1915. Pp. 315.
- Edgeworthy, F. Y.* The cost of war. New York: Oxford Univ. Press.
- Evesque, Maurice.* Les finances de guerre au XX^{me} siècle. Montpellier: Firmin et Montane. 1914. Pp. 707.
- Fayle, C. F.* The great settlement. New York: Dufield.
- Fédou, M. Charles.* Histoire de la juridiction consulaire en France. Carcassonne: P. Polère. 1914. Pp. 94.
- Ferrero, G.* Who wanted the European War? New York: Oxford Univ. Press.
- Fortescue, Granville.* Russia: The Balkans and the Dardanelles. London: Melrose. Pp. 286.
- Friedrich, J.* Grundzüge des Völkerrechts. Leipzig: Gloeckner.
- Fuehr, A.* The neutrality of Belgium. New York: Funk and Wagnalls.
- Germany's violations* of the laws of war, 1914-15. Compiled under the auspices of the French Ministry of Foreign Affairs. London: Heinemann. Pp. 381.
- Handbuch des Völkerrechts.* Hrsg. u. mithbearb. Prof. Dr. Fritz Stier-Somlo. III. Bd. Stuttgart: W. Kohlhammer.
- Hannah, I. C.* Arms and the map. London: T. Fisher Unwin.
- Hart, A. B.* The Monroe doctrine. Boston: Little, Brown.
- Henning, K.* Die Wahrheit über Amerika. Leipzig: J. Klinkhardt.
- Hirschfeld, E.* Der Reichszustand Belgiens nach einjähriger deutscher Besetzung. Berlin: C. Henmann. 1915. Pp. vii, 40.
- International Law Association* reports as prepared for the conference to have been held at the Hague in 1914. London: Sweet and M.
- Jacob, Louis.* La clause de livraison des archives publiques dans les traités d'annexion. Paris: Giard et Brière. 1915. Pp. 118.

- Jaray, G. L.* Au jeune royaume d'Albanie. Paris: Hachette. 1914. Pp. 256.
- Jastrow, I.* Geld u. Kredit im Kriege. Jena: G. Fischer.
- Jentsch, Carl.* Der Weltkrieg u. die Zukunft des deutschen Volkes. Berlin. Felber. 1913. Pp. 224.
- Jèze, Gaston, and others.* Problèmes de politique et finances de guerre. Paris: Alcan.
- Jones, J.* The fall of Tsing-Tau. Boston: Houghton Mifflin.
- Lachapelle, G.* Nos finances pendant la guerre. Paris: A. Colin.
- La Chesnais, P. G.* Le group socialiste du Reichstag et la déclaration de guerre. Paris: Armand Colin. 1915. Pp. 107.
- La guerre.* Conférences organisées par la société des élèves et anciens élèves de l'École libre des sciences politiques. Paris: Alcan.
- Lesage, C.* Cables sous-Marins Allemands. Paris: Plon.
- Lestrangle, M. de.* La question religieuse en France pendant la guerre de 1914. Paris: Lethielleux. 1915. Pp. 159.
- Lichtenberger, A. et H.* La question d'Alsace. Paris: Chapelot. 1915.
- Lipkowsky, J. de.* La question polonaise et les Slaves de l'Europe centrale. Paris. 1915. Pp. 164.
- Lippmann, W.* The stakes of diplomacy. New York: Henry H.
- Loewel, Pierre.* Le canal de Panama. Paris: A. Rousseau. 1913. Pp. 156.
- Loisy, Alfred.* The war and religion. Trans. by Arthur Galton. London: Blackwell. Pp. 110.
- Long, R. C.* Colours of war. New York: Scribner.
- Lyde, L. W.* Some frontiers of tomorrow. New York: Macmillan.
- Mackay, B. L.* Die moderne Diplomatie, ihre Entwicklungsgeschichte u. Reformmöglichkeiten. Frankfurt: Rütten u. Loening. 1915. Pp. 175.
- Mackaye, P.* A substitute for war. New York: Macmillan.
- Margo, A. D. V. A.* Italy and the European war. New York: Putnam.
- Meurer, C.* Der Lusitania-Fall. Eine völkerrecht. Studie. Tübingen. J. C. B. Mohr. 1915. Pp. 109.
- Meyer, E.* England. Seine staatl. u. politik. Entwicklung der Krieg gegen Deutschland. Stuttgart: Nacht. 1915. Pp. 213.
- Mounié, Jean.* La situation internationale de la Principauté de Monaco. Montpellier: Firmin et Montane. 1913. Pp. 411.
- Muller, J.* The invasion of America. New York: Dutton.
- Newbiggin, M. I.* Geographical aspects of Balkan problems. New York: Putnam.
- Oliver, F. S.* Ordeal of battle. New York: Macmillan.
- Page, A.* War and alien enemies. The law affecting their personal and trading rights, and herein of contraband of war and the capture of prizes at sea. 2nd ed. London: Stevens. Pp. 223.
- Penchinat, A. L.* Application des principes internationaux dans la conduite de la guerre Italo-Turque. Montpellier: Firmin et Montane. 1914. Pp. 219.
- Platet, Auguste.* La question finlandaise. Montpellier: Firmin et Montane. 1914. Pp. 122.
- Polyvios, P. J.* De la condition légale des sociétés étrangères dans l'empire Ottoman. Paris: A. Rousseau. 1913. Pp. 200.
- Ponsonby, Arthur.* Democracy and diplomacy: a plea for popular control of foreign policy. London: Methuen. Pp. 213.

- Potter, J. H.* Judgment of war. London: Skeffington.
- Poulgy, Grégoire.* Les emprunts de l'état Ottoman. Paris: Jouve et Cir. 1915. Pp. 237.
- Revilliod, M.* L'organisation intérieure des pays de protectorat. Paris: A. Rousseau. 1913. Pp. 153.
- Richardson, H. E.* International law. New York: Oxford Univ. Press.
- Rohrbach, P.* Der Krieg u. die deutsche Politik. 2 Aufl. Weimar. 1915. Pp. 184.
- Sanger, C. P., and Norton, H. T. J.* England's guarantee to Belgium and Luxembourg. With the full text of the treaties. London: Allen and U. Pp. 162.
- Scott, J. B.* The Hague conventions and declarations of 1899-1907. New York: Oxford Univ. Press.
- Sévis et Aubry, J.* Les Parisiens pendant l'état de siège. Paris: Berger-Levrault. 1915. Pp. xi, 255.
- Souza, C. de., and Macfall, H.* Germany in defeat. London: K. Paul.
- Steinuth, H.* England u. der U-Boot-Krieg. Stuttgart Deutsche Verlags-Austalt. 1915. Pp. 91.
- Straszewski, M. R.* Die polnische Frage. Wien: H. Goldschmiedt. 1915. Pp. 89.
- Swain, A. H.* The war and life assurance. London: Insurance Press.
- Temple, W.* Church and nation. New York: Macmillan.
- Thayer, W. R.* The life of John Hay. 2 vols. Boston: Houghton Mifflin.
- Valter, M. B. C.* Neue Beiträge zur Entstehungsgeschichte des Weltkrieges. 1914. Berlin: Concordia. 1915. Pp. 183.
- Vidal, Emile.* La politique de l'Espagne au Maroc. Montpellier: Firmin et Montane. 1913. Pp. 298.
- Vogt, W.* La Suisse allemande au début de la guerre de 1914. Paris: Perrin. Pp. 162.
- Wallace, E.* The war of the nations. London: Newnes.
- Wharton, E.* Fighting France. New York: Scribner.
- White, J. W.* America and Germany. London: T. F. Unwin.
- Wister, O.* The Pentecost of calamity. New York: Macmillan.
- Woods, F. A., and Baltzly, A.* Is war diminishing? Boston: Houghton Mifflin.

Articles in Periodicals

- Adriatic.** The problem of the Adriatic: Italy, Austria and Southern Slavs. *J. A. R. Marriott.* Univ. Cent. Dec., 1915.
- Alien Enemies.** International law as applied by England in the war. III. The treatment of alien enemies. *Norman Bentwich.* Am. Jour. of Int. Law. July, 1915.
- Alien Enemies.** The treatment of enemy aliens. *Quart. Rev.* Oct., 1915.
- Aliens.** Der Gerichtsstand für die Ehescheidungsklagen von Ausländern im Deutschen Reiche. *Wohl. Zeits. f. Int. Recht.* XXV, 4 and 6. 1915.
- Alsace-Lorraine.** Le statut des Alsaciens-Lorrains pendant la guerre. *Paul-Albert Helmer.* Rev. Pol. et Par. 10 Sept. 1915.
- Anglo-German Rivalry.** La rivalité économique Anglo-Allemande. *B. E. Schmitt.* Rev. Pol. Int. Juil.-Août 1915.

Arbitration. The lawyer in international arbitration. *William Renwick Riddell.* Ill. Law Rev. Nov., 1915.

Armenia. Armenians and the partition of Asia minor. *W. L. Williams Fortu.* Rev. Nov., 1915.

Armenia. La nouvelle question d'Arménie. *G. Lecarpentier.* Rev. d. Sci. Pol. 15 Déc., 1915.

Balkans. Balkans et Danube. *G. Demorgny.* Rev. Pol. et Par. 10 Nov., 1915.

Balkans. The Balkans and diplomacy. *J. W. Headlam.* Atlan. Mon. Jan., 1916.

Belgium. Les étapes de la neutralité belge de Richelieu à nos jours. *René Dallot.* Rev. d. Sci. Pol. 15 Oct., 1915.

Belgium. Neutrals and Belgian neutrality. *Ch. de Vissot.* Contemp. Rev. Oct., 1915.

British Empire. The war and the British realms. *A. F. Pollard.* Yale Rev., Jan., 1916.

China. China's vital question. *Jeremiah W. Jenks.* N. Am. Rev. Dec., 1915.

China. Japanese policy in China. *J. O. P. Bland.* Univ. Cent. Nov., 1915.

China. The monarchical movement in China. *K. C. Lu.* Contemp. Rev. Nov., 1915.

China. The neutrality of China. *Gilbert Reid.* Yale Law Jour. Dec., 1915.

Columbia. The Columbian treaty. "*Latin American.*" N. Am. Rev. Jan., 1916.

Consuls. Konsularische Amtsbefugnisse. *Franz Dochow.* Archiv d. Öffent. Rechts. XXXV, 1. 1915.

Continuous Voyages. The doctrine of continuous voyages in the eighteenth century. *Harmodio Arias.* Am. Jour. of Int. Law. July, 1915.

Cotton. Germany and cotton. *W. J. Ashley.* Atlan. Mon. Jan., 1916.

Diplomacy. The new diplomacy and the old tradition. *G. H. S. Escott.* Fortn. Rev. Oct., 1915.

Drago Doctrine. Die Dragodoktrin und die Festsetzungen der Zweiten Haager Friedenskonferenz. *Spielhagen.* Zeits. f. Int. Recht. XXV, 4 and 6. 1915.

English Press. La littérature anglaise et la guerre. *Ch. Bastide.* Rev. d. Sci. Pol. 15 Oct., 1915.

Europe. Problems for a European congress. *Frederic Harrison.* Univ. Cent. Dec., 1915.

European War. Les opérations de la guerre en 1914. Les débuts de la guerre. Le plan allemand. *Général Malletterre.* Rev. d. Sci. Pol. 15 Déc., 1915.

European War. L'Organisation du marché du travail et la guerre. *Éduard Fuster.* Rev. Pol. et Par. 10 Déc., 1915.

European War. Some questions of international law in the European war. VII. *James W. Garner.* Am. Jour. of Int. Law. July, 1915.

France. La France peut-elle payer sa victoire? *Fernand Faure.* Rev. Pol. et Par. 10 Juil., 1915.

German Press. La presse allemande pendant la première année de guerre. *V. H. F.* Rev. d. Sci. Pol. 15 Oct. and Déc., 1915.

- Germany. L'Allemagne moderne vue par un Anglais. *Léon Morel*. Rev. d. Sci. Pol. 15 Oct., 1915.
- Germany. If Germany—? *Munroe Smith*. N. Am. Rev. Nov., 1915.
- Greece. Greece and Europe. *Politicus*. Fortn. Rev. Nov., 1915.
- Hague Conferences. Die Anwendbarkeit der Haager und Genfer Abkommen in gegenwärtigen Kriege. *Ernst Zitelmann*. Archiv d. Öffent. Rechts. XXXV, 1915.
- Hague Conferences. Der Haager Konventionen vom 12. 6. 1902 über die Eheschliessung und Ehescheidung in ihrem Verhältnisse zum ungarischen Privatrechte. *Schwartz*. Zeits. f. Int. Recht. XXV, 4 and 6. 1915.
- Hague Conferences. Rückblicke auf die Haager Friedenskonferenzen. *Lammasch*. Zeits. f. Int. Recht. XXVI, 1 and 2. 1915.
- Holy Places. La France et la question des Lieux-Saints. *Comte Ccessaly*. Rev. Pol. et Par. 10 Reft., 1915.
- International Law. L'avenir du Droit international. *Charles Dupuis*. Rev. d. Sci. Pol. 15 Dec., 1915.
- International Law. Changes in international law. *Simeon E. Baldwin*. Am. Bar Asso'n Jour. Oct., 1915.
- International Law. Gegenwartsfragen des Völkerrechts. *Strupp*. Zeits. f. Int. Recht. XXV, 4 and 6. 1915.
- International Law. Seven postulates of international law. *Sir John Macdowell*. Contemp. Rev. Jan., 1916.
- Interparliamentary Union. Die Interparlamentarische Union (1889-1914). *Richard Eickhoff*. Zeits. f. Pol. VIII, 3 and 4. 1915.
- Italy. Italy and the Adriatic. *Quart. Rev.* Oct., 1915.
- Italy. Italy and England. *Romola Murri*. Contemp. Rev. Nov., 1915.
- Mexico. The great Mexican revolution. *Carlo de Fornaro*. Forum. Nov., 1915.
- Monroe Doctrine. Shall we defend the Monroe Doctrine? *Albert Bushnell Hart*. N. Am. Rev. Nov., 1915.
- Munitions. Le marché des armes aux États-Unis et le devoir des neutres. *A. De Lapradelle*. Rev. Pol. et Par. 10 Oct., 1915.
- Peace. Outlines for a permanent peace. *Charles Stewart*. Fortn. Rev. Dec., 1915.
- Piracy. Die völkerrechtliche Denationalisierung der Piraterie. *Geberl*. Zeits. f. Int. Recht. XXVI, 1 and 2. 1915.
- Prisoners of War. Strafgerichtsbarkeit im Kriege über Ausländer, insbesondere Kriegsgefangene. *Adolf Arndt*. Zeits. f. Pol. VIII. 3 and 4. 1915.
- Railways. Les chemins de fer français et la guerre. *Marcel Peschaud*. Rev. Pol. et Par. 10 Oct., 1915.
- Roumania. Roumania's attitude and position. *Politicus*. Fortn. Rev. Dec., 1915.
- Sea Power. Can sea power decide the war? *Roland G. Usher*. Atlan. Mon. Jan., 1916.
- Servitudes. The doctrine of servitudes in international law. *Pitman B. Potter*. Am. Jour. of Int. Law. July, 1915.
- Socialism. Les socialistes anglais et la guerre. *Daisy Bridgman*. Rev. Pol. Int. Juil.-Août, 1915.

South Africa. Germany and South Africa. *R. C. Hawkin.* *Contemp. Rev.* Oct., 1915.

State. Der Staat als sittliches Wesen. I. *A. M. Bartholody.* *Archiv d. Rechts- u. Wirtschaftsphil.* IX, I. 1915.

Syria. La France et la question syrienne. *Comte Cressaty.* *Rev. Pol. et Par.* 10 Juin, 1915.

Treaty Obligation. Die völkerrechtliche Stellung des Verbündeten. *Rehm.* *Zeits. f. Int. Recht.* XXVI, 1 and 2. 1915.

Turkey. La Turquie et la guerre. *J. Aulneau.* *Rev. Pol. et Par.* 10 Juil, 1915.

War. American politics and the American note. *James Davenport Whelpley.* *Fortn. Rev.* Dec., 1915.

War. Le coût de la guerre. *Fernand Faure.* *Rev. Pol. et Par.* 10 Sept. and 10 Oct., 1915.

War. Die deutsche Kriegswochenhilfe. *Dr. Echelborn.* *Annalen d. Deutschen Reichs.* No. 7. 1915.

War. Le droit des gens et la guerre de 1914. *William Loubat.* *Rev. Pol. et Par.* 10 Juin, 1915.

War. Der Einfluss der Kriege auf völkerrechtliche Verträge. *Kleinfeller.* *Zeits. f. Int. Recht.* XXV, 4 and 6. 1915.

War. L'esprit de l'humanisme et la guerre. *Albert De Berzeviczy.* *Rev. Pol. Int.* Juil.-Août, 1915.

War. Die Freien Gewerkschaften in Deutschland während des Krieges. *Johann Sassenbach.* *Zeits. f. Pol.* VIII, 3 and 4, 1915.

War. French idealism and the war. *William Morton Fullerton.* *Quart. Rev.* Oct., 1915.

War. Die Fürsorge für Kriegsbeschädigte. *H. von Frankenberg.* *Annalen d. Deutschen Reichs.* No. 7. 1915.

War. Government measures on war distress. *Herbert Samuel.* *Univ. Cent. Nov.*, 1915.

War. Grundsätzliches zum deutschen Kriegsfürsorgerecht der Zukunft. *Eberhard Erhr. von Scheurl.* *Archiv d. Öffent. Rechts.* XXXV, 1. 1915.

War. Krieg und Völkerrecht vor dem deutschen Reichsgericht. *Beer.* *Zeits. f. Int. Recht.* XXV, 4 and 6. 1915.

War. Kriegswesen und Wirtschaftsleben. *Fritz Roedern.* *Zeits. f. Pol.* VIII, 3 and 4. 1915.

War. Die österreichischen Kriegsgesetz und Kriegsverordnungen. *Friedrich Kleinwaechter.* *Archiv d. Öffent. Rechts.* XXXV, 1. 1915.

War. Les réparations des dommages causés par la guerre. Principes et applications. *F. Larnaude.* *Rev. Pol. et Par.* 10 Juin, 1915.

War. Les Sanctions de guerre offertes par l'histoire. *H. Laurier.* *Rev. Pol. et Par.* 10 Juin, 1915.

War. Les sanctions des lois de la guerre. *E. Spire.* *Rev. Pol. et Par.* 10 Sept., 1915.

War. Les Sanctions pénales des Abus de la guerre. *I. Tchernoff.* *Rev. Pol. et Par.* 10 Juil, 1915.

War. Volkswirtschaftliche Lehren des Weltkrieges. *W. E. Biermann.* *Archiv f. Rechts- u. Wirtschaftsphil.* IX, 1. 1915.

- War Ships.** Die Umwandlung von Kauffahrteischiffen in Kriegsschiffe. *Kriege. Zeits. f. Int. Recht.* XXVI, 1 and 2. 1915.
- West Indies.** Foundations of West India policy. *Dixon R. Fox. Pol. Sci. Quart.* Dec., 1915.

JURISPRUDENCE

Books

- Barnett, J. D.* The operation of the initiative, referendum, and recall in Oregon. New York: Macmillan. 1915. Pp. 295.
- Bedel, M. Roger.* La nation de la loi. Paris: G. Steinheil. 1914. Pp. 101.
- Cassin, René.* La conception des droits de l'état. Paris: Léon Tenin. 1914. Pp. 196.
- Dagallier, Jean.* Les institutions judiciaires de l'Égypte ancienne. Paris: Gamber. 1914. Pp. 192.
- Dilnot, George.* Scotland Yard. The methods and organization of the metropolitan police. London: Marshall. Pp. 138.
- Francois-Poncet, Albert.* Le jury civil en France. Paris: Rousseau. 1914. Pp. 227.
- Fritts, F.* The concept of equality in its relation to a principle of political obligation. Princeton: University Press.
- Goddard, Henry H.* The criminal imbecile. New York: Macmillan.
- Mailland, F. W., and Montague, F. C.* A sketch of English legal history. New York: Putnam.
- Massina, Abel.* Notion de l'application des lois territoriales Françaises. Montpellier: Firman et Montane. 1913. Pp. 301.
- Noailles, Pierre.* Les collections de nouvelles de l'empereur Justinien. Bordeaux: Y. Cadoret. 1914. Pp. 210.
- Rigaud, Louis.* La théorie des droits réels administratifs. Paris: Léon Tenin. 1914. Pp. 360.
- Stone, H. F.* Law and its administration. New York: Columbia Univ. Press.
- Taylor, W. L.* The man behind the bars. London: Bickers.
- Wolman, L.* The boycott in American trade unions. Baltimore: Johns Hopkins Press.

Articles in Periodicals

- Administrative Discretion.** The substitution of rule for discretion in public law. *Ernst Freund. Am. Pol. Sci. Rev.* Nov., 1915.
- Criminal Procedure.** Defects in our criminal procedure. *Walter Clark and Charles B. Faris. Jour. of Crim. Law and Crim.* Nov., 1915.
- Criminal Responsibility.** Criminal responsibility. *Philip Coombs Knapp. Jour. of Crim. Law and Crim.* Nov., 1915.
- Detection of Criminals.** The modus operandi system in the detection of criminals. *Raymond B. Fosdick. Jour. of Crim. Law and Crim.* Nov., 1915.
- Duties and Rights.** The correspondence of duties and rights. *Henry T. Terry. Yale Law Jour.* Jan., 1916.

Equity Reform. The law and equity reform bill. *A. L. Sanborn.* Yale Law Jour. Jan., 1916.

Equity Rules. Working under federal equity rules. *Wallace R. Lane.* Harv. Law Rev. Nov., 1915.

Hungarian Code. Der Entwurf eines bürgerlichen Gesetzbuches für Ungarn. *Engelmann.* Zeits. f. Int. Recht. XXV, 4 and 6. 1915.

Immigration and Crime. Immigration and crime. *Grace Abbott.* Jour. of Crim. Law and Crim. Nov., 1915.

Individual Interests. Individual interests in the domestic relations. *Roscoe Pound.* Mich. Law Rev. Jan., 1916.

Interpretation. Interpretation of the written law. *Ernest Bruncken.* Yale Law Jour. Dec., 1915.

Judicial Procedure. Regulation of judicial procedure by rules of court. *Roscoe Pound.* Ill. Law Rev. Oct., 1915.

Judiciary. The judiciary. *Joseph W. Bailey.* Am. Bar Asso'n Jour. Oct., 1915.

Justice. Justice, commercial morality, and the federal supreme court: the Waterman pen case. *John H. Wigmore.* Ill. Law Rev. Oct., 1915.

Law. La "notion du droit" en France au XIX^e Siècle. *M. J. Bonnetcase.* Rev. Gén. d. Droit, d. la Légis. et d. la Juris. Juil.-Août., 1915.

Law and Order. A new province for law and order. *Henry Bournes Higgins.* Harv. Law Rev. Nov., 1915.

Lawyer. The lawyer. *P. W. Meldrim.* Am. Bar Asso'n Jour. Oct., 1915.

Legal Development. The growing law. *Francis J. Swayze.* Yale Law Jour. Nov., 1915.

Legal Education. The law and the law school. *Felix Frankfurter.* Am. Bar Asso'n Jour. Oct., 1915.

Legal Education. The Redlich report and the case method. *Albert Kocourek.* Ill. Law Rev. Dec., 1915.

Legal Philosophy. Ueber kritische und metaphysische Rechtsphilosophie. I. *Julius Binder.* Archiv f. Rechts- u. Wirtschaftsphil. IX, 1. 1915.

Legal Procedure. How shall the people of the United States of America reform their legal procedure so as to make it an instrument of justice? *Hugh Evander Willis.* Jour. of Crim. Law and Crim. Nov., 1915.

Legal Procedure. The Pennsylvania practice act of 1915. *David Werner Amram.* Pa. Law Rev. Jan., 1916.

Legal Regulation. Labor, capital, and business at common law. *Edward A. Adler.* Harv. Law Rev. Jan., 1916.

Penology. Employment and compensation of prisoners. *William N. Gemmill.* Jour. of Crim. Law and Crim. Nov., 1915.

Public Defender. Public defender. *Mayer C. Goldman.* Jour. of Crim. Law and Crim. Nov., 1915.

Religious Corporations. Nature of American religious corporations. *Carl Zollmann.* Mich. Law Rev. Nov., 1915.

Roman Law. The civil law and the common law—a world survey. *R. W. Lee.* Mich. Law Rev. Dec., 1915.

Workmen's Compensation. The jurisprudence of the workmen's compensation laws. *P. Tecumseh Sherman.* Pa. Law Rev. Oct., 1915.

MUNICIPAL GOVERNMENT

Books

- Taylor, G. R.* Satellite cities. New York: Appleton.
Zueblin, C. American municipal progress. New and rev. ed. New York: Macmillan.

Articles in Periodicals

- Ashtabula Plan.** The Ashtabula plan—the latest step in municipal organization. *Augustus R. Hatton.* Nat. Munic. Rev. Jan., 1916.
Civil Service. New York city's civil service. *Nelson S. Spencer.* Nat. Munic. Rev. Jan., 1916.
Municipal Government. American conceptions of municipal government. *Clinton Rogers Woodruff.* Nat. Munic. Rev. Jan., 1916.
Municipal Progress. Coming of age: municipal progress in twenty-one years. *William Dudley Foulke.* Nat. Munic. Rev. Jan., 1916.
New York City. Mayor Mitchel's administration of New York. *Henry Buère.* Nat. Munic. Rev. Jan., 1916.
Terre Haute. The Terre Haute election trial. *Stella C. Stimson.* Nat. Munic. Rev. Jan., 1916.

MISCELLANEOUS

Books

- Anthony, K.* Feminism in Germany and Scandinavia. New York: Holt.
Barnett, S. A. Practical socialism. New York: Longmans.
Blondel, Georges, and others. La vie politique dans l'Empire allemand. Paris: Félix Alcan.
Brandt, J. L. Anglo-Saxon supremacy. Boston: Badger.
Brulle, Roger. De la responsabilité de l'état. Bordeaux: Y. Cadoret. 1914. Pp. 106.
Chamberlain, H. S. Politische Ideale. Munchen: F. Bruckmann.
Cubberley, E. P., and Elliott, E. C. State and county school administration. Vol. II. Source Book. New York: Macmillan.
Cunningham, W. Christianity and politics. Boston: Houghton Mifflin.
Davidson, William L. Political thought in England. The utilitarians from Bentham to J. S. Mill. London: Home Univ. Lib. of Mod. Thought. Pp. 256.
Dehn, Paul. England u. die Presse. Hamburg: Deutschnationale Buchh.
De Montfort, H. Archambault. Les idées de Condorcet sur le suffrage. Paris: Lib. Soc. Française. 1915. Pp. 218.
Gayda, V. Modern Austria. New York: Dodd, Mead.
Goldsmith, P. H. A brief bibliography of works on Latin-America. New York: Macmillan.
Hecker, J. F. Russian sociology. New York: Columbia Univ. Press.
Hoare, H. J. Old age pensions; their actual working and ascertained results in the United Kingdom. London: P. S. King. Pp. 208.
Holmes, F. L. Regulations of railroads and public utilities in Wisconsin. New York: Appleton.

Hopkins, J. C. The Canadian annual review of public affairs. 1914. Toronto: Annual Rev. Pub. Co. Pp. 782-51.

Huidekoper, F. L. The military unpreparedness of the United States. New York: Macmillan.

Hyndman, H. M. The future of democracy. London: Allen and U. Pp. 220.

Johnson, E. R., and others. History of domestic and foreign commerce of the United States. Vols. I and II. Washington: Carnegie Inst.

McCabe, J. The Kaiser: his personality and career. London: T. Fisher Unwin.

Macdonald, J. A. Democracy of the nations: a Canadian view. London: H. Milford.

Mackaye, P. The new civilization. New York: Macmillan.

Marriott, J. A. R., and Robertson, C. G. The evolution of Prussia: the making of an empire. New York: Oxford Univ. Press.

Muir, W. The Caliphate: its rise, decline, and fall. London: Grant.

Muller, J. W. The A B C of national defense. New York: Dutton.

Orth, S. P. The relation of government to property and industry. Boston: Ginn.

Osborn, H. F. Men of the old stone age. New York: Scribner.

Post, F. L. The taxation of land values. Indianapolis: Bobbs-Merrill.

Schaeffer, H. The social legislation of the primitive Semites. New Haven: Yale Univ. Press.

Stewart, H. L. Nietzsche and the ideals of modern Germany. New York: Longmans.

Sykes, M. The Caliphs' last heritage. New York: Macmillan.

Taft, W. H. Ethics in service. New Haven: Yale Univ. Press.

Taylor, Hugh. Government by natural selection. London: Methuen. Pp. 224.

Thillet, L. Les doctrines politiques de Léon XIII. Bordeaux: Y. Cadoret. 1914. Pp. 152.

Wehberg, Hans. Das Papsttum. Umschlag: M. Gladbach. 1915. Pp. 131.

Articles in Periodicals

Alcohol. Le régime fiscal de l'alcohol. *Arthur Girault.* Rev. Pol. et Pol. 10 Nov., 1915.

Austria. Modern Austria. *Earl of Cromer.* Quart. Rev. Oct., 1915.

British Empire. The trend within the British Empire. *Theodore H. Boggs.* Am. Pol. Sci. Rev. Nov., 1915.

Caucus. The congressional caucus of today. *Wilder H. Haines.* Am. Pol. Sci. Rev. Nov., 1915.

Democratic Ideals. The American democratic ideal. *Brooks Adams.* Yale Rev. Jan., 1916.

Germany. Aspects of Teutonism: I. The "German god." *A. W. G. Randall.* Fortn. Rev. Oct., 1915.

Germany. Aspects of Teutonism: II. German logic—and its results. *Arthur E. P. Browne Weigall.* Fortn. Rev. Oct. 1915.

Germany. The Hohenzollerns and the German national character. *Suum Cuique.* Contemp. Rev. Jan., 1916.

- Germany. Understanding Germany. *Max Eastman*. Forum. Jan., 1916.
- Germany. L'Usure allemande. *Général Cousin*. Rev. Pol. et Par. 10 Nov., 1915.
- Governments. Versuch eines natürlichen Systems der Staatsformen. *Rudolf Kjellén*. Zeits. f. Pol. VIII, 3 and 4. 1915.
- Irrigation. Public service irrigation companies. *Samuel C. Wiel*. Col. Law Rev. Jan., 1916.
- Navy. Naval principles. *Rear Admiral Bradley A. Fiske*. N. Am. Rev. Nov., 1915.
- Post Office. Der öffentliche Wohlfahrtszweck der Staatspost. *Hellmuth*. Archiv d. Öffent. Rechts. XXXIV, 3 and 4. 1915.
- Preparedness. Naval preparedness. *Rear Admiral Bradley A. Fiske*. N. Am. Rev. Dec., 1915.
- Prussia. L'exploitation du domaine industriel et agricole de la Prusse. *Henri Schuhler*. Rev. d. Sci. Pol. 15 Oct., 1915.
- Schopenhauer. Die Rechts- und Staatsphilosophie Schopenhauers. *Bovensiepen*. Zeits. f. d. gesamte Staatswiss. Zweites heft. 1915.

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NATIONALISM IN THE BRITISH EMPIRE¹

A. MAURICE LOW, M.A.

The time and the place are the fitting setting for a discussion of the nationalism of the British Empire—that Empire which is more than a State, more than a union of States, greater than a confederation, more powerful than a league; an Empire composed of so many different, diverse and, at times, seemingly antagonistic elements that it has long been predicted by statesmen and theorists it would disintegrate at the first shock. The test has been met and endured. The British Empire is stronger because of the stress.

In a few hours there will be brought to a close the most blood stained year in all history. No man dare predict what misery or happiness the mystery of the new year will reveal, how many maps of Europe will be rolled up, who will make the penitential pilgrimage to Canossa, whether thrones will be shaken in the dust or nations survive; but one prophecy can be made, and for that the vision of the seer is not necessary. The events of the last eighteen months have proved to the world that the British Empire is bound by no frail rope of sand but is linked by bonds of steel. It is no weak structure built on shifting ground. It is an Empire of many races and creeds, but one in its unity. Come what may, the British Empire lives, and in the year to come, as in

¹ An address before the American Political Science Association in Washington, D. C., December 31, 1915.

the years to follow, no matter what sacrifices it may be called upon to make the spirit of nationality will become more vigorous, for its people are now united as never before. They are in very fact blood brothers. In Flanders and in France, in the Gallipoli peninsula and in Serbia the soil has been stained with the blood of the Empire, the blood of the motherland, its dominions and colonies, and the blood of its sons is the strength of Empire. Eighteen months ago the Empire was to many of its people an expression, today it is a living reality. For it men have died. And that for which men make glad sacrifice is to the living sacred.

No place more appropriate than Washington, not even London itself, could be selected for a discussion of the nationalism of the British Empire, for it was Washington, the man, and the lesson taught us in the eighteenth century by the United States that brought about the change in the governance of the Empire that laid the foundation of its strength.

I have often regretted that English boys and the students of English universities are not required to study American history. It would, I believe, well repay the time devoted to the subject, and if the study was intelligently pursued it would not only enable Englishmen to have a more sympathetic comprehension of America but in time they might be able to make Americans understand the causes that brought about the separation between the motherland and her American colonies. Most Americans have only vague ideas on the subject. Many believe that it was some sort of a petty dispute about the price of tea—as if one of the great epochs of history was of no greater dignity than a corner grocery squabble between its grasping proprietor and a shrewish housewife—others have some sort of a hazy notion that “taxation without representation” made the colonists take up arms. Now the truth is that England lost her American colonies because England was not one whit better nor one whit worse than her time, no more intelligent and no less selfish than her age. A colony was regarded by the parent state as something to be exploited, and the colonists, to use a very expressive Americanism, were “to be charged all that the traffic would bear.” It had always been so. It was the baleful legacy of the ancients. It

was the teachings of Rome too faithfully observed by Spain, Holland, France and England when they spread out and brought the undiscovered lands under their dominion. Almost invariably the colony came to the parent state as the spoils of war, an alien people were brought under alien ownership, and seldom if ever did sympathy or a desire for mutual understanding enter into the relation. The colony was regarded simply as a source of wealth, valuable only as it could be made to yield to the tax gatherer, valueless if it did not swell the national revenues. The Greeks as well as the Romans, the Spanish, the Dutch, the French and the English traveled this miserable road. Whether it was satrapy, province, possession or colony they were all administered with the sole purpose to make the suzerain rich regardless of the injury done to the vassal.

To America came not a new people but an old race who gathered new ideas from a virgin soil. Perhaps the ideas were not new, perhaps they had long been germinating, but it was on the soil of the American continent they first struck root and came into flower. The American colonists were not only tired of being exploited for the profit of England but they were resolute enough to resist it. The consequences we all know.

But greater consequences were to follow, that is, if it be permissible to suggest to this audience there could be consequences greater even than the independence of the United States. The lesson taught by the American colonists was not learned immediately, because governments are slow to learn and obstinate in adhering to tradition, but it was the beginning of a new relation between Great Britain and her colonies, and it made possible the Empire as we today know it, an Empire held together by strong ties of affection, mutual interest and conviction in the justice and benevolence of British rule. The change did not come at once—it is only nature that is catastrophic, man is never; for nature lets her fury loose when she is in reforming mood, but man must work with infinite patience—generation after generation of statesmen had to pass before the old system of colonisation was abandoned. The age long theory of government of the Greeks and the Romans was replaced by the British. That is the world's

debt to England. She has taught the world the science of the government of colonies; of colonies built up by her sons who have gone across the seas and planted the seed in a new land, as well as colonies of men alien in speech and color.

Experience taught British statesmen that there could be no permanent connection between the parent state and a colony unless it was the same relation that ought to exist between parents and children. If a father regards his sons as simply the means of increasing his own income, if he abuses their tender strength and takes from them their wages, for him they will have no sense of gratitude and no feeling of affection, rather they will sullenly think of him as a harsh taskmaster and count the days when they can escape from his control. Let him, on the other hand, protect them and encourage them in their youth, and in their manhood they will support his declining years, and feel the pride of family.

It is as a benevolent parent England has dealt with her colonies since she was freed from the intellectual shackles of Greece and Rome. A well known English publicist has put in an epigram the English character by saying "we shall follow our rather sensible British custom of first doing a thing and then discovering that we have done it," which is an admirable presentation of the English mind. The English are not a logical race. They do not reason deeply, nor have they the power and love of analysis. But they have a peculiar faculty of doing a thing and then discovering not only that they have done it but that it was the right thing to do. Had Frenchmen or Germans been possessed of the colonising spirit of England in the early decades of the nineteenth century, and had it penetrated their intelligence that the old system was wrong and a new relation must exist between the parent state and its colonies, doubtless voluminous disquisitions, brilliant, logical and keenly analytic in the one case, and profoundly scientific in the other, would have been written in support of the charge. You will find little of this in English writings. You will find, of course, controversy and criticism, you will find men with a glimmering of the truth, who resented being kept in a state of tutelage, who saw the folly of a system that must inevit-

ably lead to disaster, but there was no philosopher with vision great enough and brain strong enough to create a school.

The change came about, as I have said, gradually, casually almost, if I may use the word, born of experience. The loss of the American colonies had shown that it was impossible for a sea flung empire to endure if the strength and wealth of a colony were to be drained for the enrichment of the motherland, which instead of performing the function of a mother and nurturing her young was a harpy to suck their vitality. Statesmen sat at the feet of economists and to their amazement learned that a nation did not become rich simply because it sold, but there was a profit to be made when it bought. The old fear that a colony would become so rich and so strong that it would assert its independence gave place to the knowledge that the wealth and strength of a colony contributed to the wealth and strength of the Empire, that the colony could be conscious of its own nationality without weakening the spirit of the nationality of the Empire; that autonomy was not inconsistent with imperial unity.

That, in a few words, is the principle on which the British Empire of today is founded. Great Britain has no jealousy of her colonies and her colonies have no fear of Great Britain. Our self governing dominions are in fact as well as in name dominions. They are no less self governing and independent states, practically sovereignties, because of the Imperial connection, rather it is the Imperial connection that has enabled them to be independent nations; independent in everything that affects themselves, partners in the Empire of which they are justly proud. A Canadian, an Australian, a South African holds dual allegiance. He is a citizen of his own nation, glorying in its past and confident of its future; a past inseparably associated with the Empire, its future not apart from but a part of the Empire he has helped to build and to maintain. The more intense that spirit of local allegiance the greater the devotion to the Empire.

These are not mere assertions. The proof is to be found in the events of the last year, it is written in the bloodsoaked fields of Northern France, Serbia, and Turkey. When war was declared the Empire responded. Canadians vied with English-

men, Australians with Scotchmen, South Africans with Welsh, Indians with Irishmen, inspired by the devotion they had for their own country, as well as for all the other countries composing the Empire. Here then was the test to determine whether the British Empire was merely patches of red on the map or a living entity held together by the dynamic agent of nationalism. The Empire has been consecrated anew in the blood of its children.

It is curious how men love to discuss questions with seriousness when the discussion is purely academic and how their fine spun theories are shattered when the necessity compels action. It was only a few years ago that in more than one of the self governing dominions newspapers and responsible ministers argued that an act of war by Great Britain did not necessarily involve the rest of the Empire. England, they held, might be at war, South Africa or Canada might remain at peace unless their governments declared in favor of war; in the absence of that declaration they were neutral. It was of course an absurd and ridiculous theory, because an Empire cannot be a unit in peace and independent and detached states when one of them is at war. It is not necessary that I should discuss that phase of colonial political thought, I mention it simply as of interest contrasted with what has actually happened. When war was declared last August a year ago there was no question of Canada or South Africa or any other dominion, dependency or colony remaining neutral and being absolved from its status as a belligerent. The sword had been drawn, and in all parts of the Empire men were girding themselves for the struggle.

I think what happened in August, 1914, is one of the most remarkable incidents in all history, the significance of which has been too little appreciated because, despite its tremendous importance, it was done so undramatically. Consider what did happen. The British Government went to war without consulting the rest of the Empire, without the slightest assurance of support from its over sea dominions, without any direct appeal to them for assistance. It took it for granted that support and assistance would be forthcoming, nor was this confidence misplaced. No man white or black then debated the question, no

government, autonomous or imperially controlled, had any doubt as to its duty. How magnificently that duty has been performed the world knows. Inspired by the spirit of nationalism dominions and dependencies, animated by loyalty and affection, gave the best of their manhood and their wealth for the protection of the Empire.

It was perhaps not surprising that countries settled by the English should prove their descent when England was in peril, but India's devotion stands, I think, without parallel. A dependency won by the sword and for generations held by the sword, whose people are alien in thought and language and customs to the ruling class, like them responded with the same alacrity to the trumpet's call, like them were filled with the same determination to protect the Empire. The native population knows that England has given them justice and improved their condition; the great chiefs knew that if England withdrew from India peace and order would be destroyed. It is a widespread belief that England exacts a heavy tribute from her great eastern dependency, but this is not true. Not one penny of the Indian revenues is diverted from the Indian treasury, the taxes paid by the people of India are spent in India for the support of the government and the development of the country. India is not autonomous, conditions make that impossible at the present time, but every year sees a larger measure of self government entrusted to the natives and a constant increase in the number of native officials. When Turkey allied herself with Germany the Sultan proclaimed a *jéhad* and called upon all true believers to come to the defence of Islam, but the Mohammedans of India have remained loyal to the King-Emperor and fought their fellow religionists, the subjects of the Sultan. The former spiritual allegiance of the Mohammedans of India to the Sheik-ul-Islam has been submerged by the greater secular allegiance to the nationalism of the British Empire.

Nationalism has grown, the ties of Empire have become stronger year by year, because after the first step the way was made easy. The first step, as you have been told, was to discard the old idea of a colony treated as an appanage and instead

to look upon the colony as an integral part of the Empire, entitled to the same consideration of justice, benevolence and commercial advantage as the parent state; not to be held perpetually in tutelage but to be practically sovereign within its own borders; the maker and enforcer of its own laws; subject only to nominal, but nevertheless effective, imperial control. Such a system naturally brought all parts of the Empire in intimate contact and while encouraging state pride, using that term in its largest meaning, did not weaken the spirit of nationality. How well the system worked we see in South Africa. It was only yesterday, as history measures time, that Briton and Boer were enemies, and today Briton and Boer are loyally fighting side by side the common enemy. That alone would vindicate British statesmanship and prove the strength of the Empire.

I have given you more than one reason why in the past a perdurable Empire was impossible, and it became possible only when the genius of British statesmanship discovered the basic vice and removed it; now let me call your attention to a still further development of the great principle that an Empire to last must be governed not by self-imposed authority but by all its component parts having a voice in the government so far as their own interests are concerned.

Heretofore it was deemed inexpedient and dangerous for a colony to be entrusted with any share in the treaty making power. The treaty was a powerful weapon in the hands of the home government, it would be used as coercion or bribe, it was therefore too valuable a prerogative to be delegated. Nominally all British treaties are made by the British Foreign Office, which is the only agency recognized by foreign governments in international relations, actually the dominions make their own commercial arrangements, and they are consulted by the home government whenever a political treaty is negotiated which in any way affects them. So far has this recognition extended that it is not merely a private arrangement between the Imperial Government and the dominions, and in that case it would be simply a matter of domestic policy, but it has become part of the policy of the British

Empire, of which formal notice has been given to the world by a clause inserted in the treaty to the effect that in any matter affecting the interests of a self governing dominion of the British Empire the concurrence of the government of that dominion must first be obtained.

Stop for a moment and think of the enormous historical development in colonisation. Compare the Roman rule of colonies that destroyed them economically, the Spanish colonising adventurers in America who came merely to wrest their spoil of gold and silver, and the spirit that has possessed the English colonist. The first thing the Romans did when they conquered a province was to build good roads, as good roads were a military necessity for the rapid march of their legions to enforce respect for the might of Rome. The first thing the English have done is to establish a government and set up courts of law so that the native might know justice would not be denied him. Under the Roman system there was little inducement for the conquered to merge their nationalism in the nationality of the conqueror; the English system while making no attempt to rob the native of his nationality, has unconsciously made him proud of his greater nationality, of the connection that unites him to the British Empire by "the crimson thread of kinship."

A Roman statesman, and for that matter an English statesman two centuries ago, could not have conceived the paradox of the loyalty of a colony to the parent state increasing the more the control of the home government relaxed. "Unless those troublesome colonists feel the iron hand," our statesman of the past would have said, "they will break loose. We won't encourage them by putting any foolish notions into their head; we won't let them take the first step that is always dangerous and proverbially leads to disaster;" and the statesman honestly believed that the only way to prevent separation was to keep the colonists in leading strings. The truth we see is the reverse. The mother country has paved the way to separation by granting the colonies autonomy and allowing each to work out its own destiny, and instead of that freedom encouraging them to cut the

imperial painter and voyage under their own command it has strengthened the bonds of imperial unity. In the words of our greatest poet of empire:

Daughter am I in my mother's house,
But mistress in my own.
The gates are mine to open,
As the gates are mine to close.

This, I repeat, is the difference between the British Empire and all other empires that have preceded it—this dual status of mother as well as daughter, this system that makes for self government without destroying empire government. Rome, whether a so-called republic or under the sway of the Caesars, was never a republic as we understand a republican form of government, but was always an autocracy resting upon military force; Greece approached nearer our conception of democracy, and in some respects it was analogous to the British Empire. It was an aggregation, not a confederation, it should be remembered, of self governing communities, some continental and some insular, whose system of government was democratic, to whom sea power was as vital as it is to the British Empire, and who were a trading rather than a military people, but who could fight when necessity arose, as Marathon and Salamis bear witness.

Yet Greece went down very easily, and the reason is not obscure. The Greek city states were independent but not imperial, and there was no imperial nexus to weld them into one imperial unity. They were like a man whose limbs are perfectly developed but whose brain is atrophied, hence there is no coördination, and the extremities are not fully energised. Marvellous people as the Greeks were, marvellous people as the Romans were, so wonderful that they did things we with all our knowledge have not been able to equal, far less to excel, they were unable to grasp what to us is so self evident that a schoolboy accepts it as a truism, and not stopping to reflect regards it as natural as a chick should be hatched from an egg. Neither Greek nor Roman could perceive the paradox of independence and dependence, authority marching side by side with subordination, local self

government supreme and yet yielding willingly to imperial requirements; dominions their own masters and still remaining the loyal children of their common parent.

If we look back less than half a century we shall see how narrowly the British Empire escaped the fate of all other empires. In the years when Mr. Gladstone was at the height of his power and the Manchester school threatened to destroy England with its pernicious policy of *laissez faire*, when Cobdenism was a fetich and cheapness was the one lesson political economy was required to teach, the colonies were held almost in contempt and regarded so lightly that it was immaterial whether they remained attached to the Empire or separated; more than one statesman looked upon the colonies as a nuisance and would gladly have seen the imperial connection dissolved; manifest destiny meant eventual separation: an amicable separation that would leave Great Britain stronger because she could devote all her energy to the development of her own resources and the extension of her trade unvexed by fear of political complications brought about through the colonies.

Fortunately destiny and the weakness of the colonies were more powerful than the short sighted folly of governments administered by incompetence. Had the colonies been as vigorous, as thickly populated and as conscious of their strength then as they are today I think it more than probable that the hope of Liberal statesmen would have been realized, the colonies would have struck the flag and raised their own standards, and the British Empire would have been only a historical memory. It is our good fortune that the colonies were in their youth and they were held to the Empire by sentimental as well as material considerations, men with greater vision came into power, and the danger, at one time very real and very near, passed, not again to threaten.

Since then nationalism and all that it connotes has powerfully seized the imagination of the people of the British Empire, and it is to a people with no common religion and no common tongue an ideal as well as an aspiration, recognized by all of them that the greater the development of nationalism the more impregnable the Empire becomes.

We have not yet reached our full development, but the events of the past year have tremendously accelerated it. Those of us who a few years ago urged federation as the only means to save the Empire from dissolution were told that we were unnecessarily alarmed, that everything was going very well, and that it was folly to disturb existing arrangements. Now we are confident we are in measurable distance of seeing federation a reality. We shall see a council or some similar body sitting in London composed of delegates from all parts of the Empire. We shall see these delegates discuss all questions affecting the Empire at large, foreign policy, tariffs, naval and military armaments, immigration, everything, in short, that is imperial as distinguished from what is only of concern to its separated parts. England will govern herself then as she now does, Canada will make her own laws, but if England must again go to war it will be only after the dominions have been consulted and given their consent, because the British Empire must resist aggression. We shall then think imperially, and thinking imperially we shall think and act nationally. And we shall do that not because we have any further desire to increase the size or might of the British Empire, not because we have any ambition to impose our will on the rest of the world or to force other peoples to adopt our system, our customs, our ideas, or our scheme of civilization, but, to quote a recent writer on the subject, because "we believe it to be not only a great Empire but a good Empire, because on the whole we think it may become the most potent instrument ever forged by human hands to promote the order, the progress, the freedom, and the peace of the world."

JUDICIAL DETERMINATIONS BY ADMINISTRATIVE COMMISSIONS¹

CHARLES W. NEEDHAM

Counsel for the Interstate Commerce Commission

One of the most striking features of our constitutional law is the persistent purpose to protect the liberties of the people from arbitrary power by vesting the functions of sovereignty in three coördinate departments of government. This division is accomplished by express provisions in some state constitutions and by necessary implication in all constitutions, federal and state. By judicial construction the legislature may not exercise judicial or administrative powers; the executive may not exercise legislative or judicial powers, and the judiciary is denied the exercise of legislative or administrative powers. This fundamental principle of constitutional law is established by judicial decisions, both state and federal, of long standing and uninterrupted unanimity.

A commission is an administrative body; may it exercise judicial functions, and if so to what extent? The question involves, first, a definition of judicial functions; second, a statement of the exceptions to the rule that judicial powers may not be exercised by the administrative department; and, third, an appreciation of the relation of judicial determinations to the regulatory powers vested in commissions. We may then consider whether or not the present scope of judicial determinations by commissions, and the court review of such determinations, are satisfactory.

¹ A paper read at the annual meeting of the American Political Science Association, December 29, 1915.

I. JUDICIAL ACTS

In the *Prentiss* case (211 U. S., 210, 226), Mr. Justice Holmes speaking for the supreme court, said:

"A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end."

Judicial acts or power have been defined in many opinions, but in none has it been stated more concisely and comprehensively than by Mr. Justice Holmes. This definition states the nature of a judicial act and provides a ready test whereby we may determine whether or not specific acts by a commission involve the exercise of judicial powers.

II. EXCEPTIONS TO THE CONSTITUTIONAL LIMITATION

The fundamental law apportions to three coördinate departments all the powers of sovereignty, and gives to each department the exclusive exercise of functions comprehended in a single word. The constitution of the United States does not attempt to define what is a legislative, a judicial, or an administrative function. These major divisions take no account of the fact that great governmental acts, to secure an efficient administration, must be wholly performed by a single department, and necessarily include the exercise of the three powers named.

Thus in the admission and deportation of aliens, the officers and boards performing executive duties investigate and determine with conclusive effect matters controlling the liberty and rights of persons. "The board is an instrument of the executive power, it is not a court." Yet these functions clearly are comprehended within the definition of judicial acts. In the collection of taxes and the administration of the revenue laws, officers and boards exercise powers that are manifestly judicial, and their determination affects the property rights of individuals. Yet it is not now questioned that these acts constitute "due process of law," and can be attacked only upon the ground of fraud, or that the officers have exercised powers not conferred by law. The land office in issuing patents for public lands determines matters

and issues that fall clearly within Mr. Justice Holmes' definition of judicial acts, yet the decisions of this administrative branch of the government are within the scope of its authority, and are conclusive upon the courts.

The postmaster-general acting under authority conferred by statute may exclude matter from the mails and absolutely destroy a private business or enterprise. Commissions, in the performance of legislative and administrative functions, determine rights affecting vast property interests and restrain the liberty of owners in the control and use of their property. We are therefore forced to find a generalization which, while preserving the fundamental law in reference to the division of powers, will delimit the exceptions to its operation.

Mr. Justice Curtis, speaking for the supreme court (*Murray's Lessee et al.*, 18 How. 272, 284), said:

"To avoid misconstruction upon so grave a subject, we think it proper to state that we do not consider congress can either withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty; nor, on the other hand, can it bring under the judicial power a matter which, from its nature, is not a subject for judicial determination. At the same time there are matters, involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper.

"It is true, also, that even in a suit between private persons, to try a question of private right, the action of the executive power, upon a matter committed to its determination by the constitution and laws, is conclusive."

To administer legislative acts and to make the laws effective it is essential that the administrative officers, boards and commissions should exercise, in some degree, powers which are in their nature judicial. If, as was said in one of the cases, the administrative officers or boards were compelled to go to a court every time they were called upon to determine a matter judicial

in its nature, the delays attendant upon such a procedure would render a law regulating a business, or prescribing governmental action, of little effect since prompt and continuous action is always necessary in the administration of such laws. The public interest would suffer by delays. This is peculiarly true of the act to regulate commerce.

We must therefore consider the three divisions of sovereign power as referring to major acts and not to those actions which are incident to the performance of the major act. In creating new laws and regulations for the maintenance of the government and the conduct of business charged with a public interest, congress may prescribe what shall, and what shall not, be done by persons and corporations affected, how the law shall be administered, and to what extent administrative officers and tribunals shall be empowered to determine judicial questions which may arise in the administration and enforcement of the law. In doing this there is no disregard of the fundamental law; legislation in the interest of the public is thereby made effective. The true test, therefore, in any given case of administrative determination, is whether the judicial act is incident to the exercise of the major legislative power. If it be necessary to the efficient administration of a public law there is no infraction of the constitutional limitation.

III. RELATION OF JUDICIAL DETERMINATIONS TO THE REGULATORY POWERS OF COMMISSIONS

The administration and enforcement of law by commissions are, comparatively, of recent development. It is a new manifestation of the democratic spirit of the constitution providing for divided responsibility. The law devolves upon a non-political board of experts, chosen with reference to their special knowledge, experience and abilities in a particular field of economic endeavor, the exercise of great authority over business charged with a public interest and subject to governmental regulation. This method of administering law secures the concurrent action of a majority of the members of a commission in the determination of issues arising under the law. In the regulation of rail-

road property and the operation of the business it gives the consideration and decisions of several persons acting as a body before such property interests can be affected. It combines the spirit of the jury system with the intelligent action of competent judges. It gives the broad view and that flexibility and adaptability of administrative action and determinations so essential in the execution of regulatory laws. The commission must conform to well conceived statutory procedure; it must recognize and obey established rules of law; but within these limits it is to work out a prompt and efficient enforcement of the law with fair justice to persons while promoting the public welfare. In this field administrative efficiency requires that some judicial determinations shall be made promptly by the administrative tribunal charged with the execution of the law. Such determinations are incident to the prevalence of the law; and prompt determination is essential to the protection of the public and of individual rights.

The interstate commerce commission is the oldest commission and will be taken as typical. It exercises great powers over a vast territory, its jurisdiction being nearly coextensive with that of the supreme court of the United States. Its powers extend over a subject matter that is of the greatest importance to the welfare of the nation. It administers the regulatory power of congress, delegated in the act to regulate commerce, over nearly a quarter of a million miles of railroad, representing over sixteen billions of dollars of property. The securities of these great properties are held by private investors in this and in foreign countries. These properties earn annually a gross revenue of three and one-half billions of dollars. The business and its immediately dependent industries employ nearly two millions of employes. The railroads pay annually in taxes over one hundred and fifty millions of dollars, and in salaries and wages to employers an even larger sum; they carry two billion tons of freight and a billion passengers per annum.

In addition to the rail lines subject to the act, there are now included: carriers engaged in the transportation by means of pipe lines, of oil and natural and artificial gas; telegraph, tele-

phone and cable companies, wire and wireless; water carriers operating in connection with rail lines; traffic passing through the Panama Canal, and coastwise trade. These carriers represent property interests of great magnitude.

The powers of the commission, over this enormous volume of commerce, stated generally, are: fixing maximum individual and joint rates for passengers and freight; determining the reasonableness of classifications of freight and of the regulations and practices of carriers subject to the act; compelling the establishment of through routes and joint rates; prescribing divisions of joint rates between carriers where they cannot agree; requiring switch connections between railroads, and rail and water lines; deciding controversies between shippers and carriers under the act regarding the reasonableness of rates and charges, discriminations between shippers and between localities, and the unlawfulness of preferences or advantages to favored shippers; determining the right to charge a greater amount for a shorter than for a longer haul under the terms of the fourth section; ascertaining damages sustained by shippers on account of the failure of carriers to obey the act; systematizing accounts kept by these carriers; instituting criminal proceedings to collect penalties for violations of the act, and civil proceedings to compel the observance of the act; and, in general, enforcing the law and securing observance of it by all carriers subject to it.

When we consider that transportation lies at the foundation—is, in fact, the foundation—of all national growth and development, political, commercial, industrial and social, and that in regulating transportation the whole superstructure of society is involved, the magnitude of this jurisdiction is almost appalling. For seven men to hold in their power and subject to their decisions the matters which determine the amount of gross and net revenues which these carriers may realize from their business, the practices which may, or may not, be adopted by carriers for the advancement of their business, and the publicity which shall be given to their affairs, has no parallel in the range of governmental administration. Private property rights of vast proportions are involved in the decisions of the commission.

And yet, if such power must be exercised—and it must be—how much better and safer it is to place the administration of the law in the hands of seven men than it would be to leave it to a single officer, or to break it up into parts and assign a part to each of several officials not required to act as a body. How important it is that these great functions should be exercised by a tribunal unhampered by political influences, and composed of men of the highest integrity, of expert knowledge and experience in the subject.

Let us now observe wherein judicial determinations are essential to the administration of this great law, using an illustrative case. In the *Abilene Cotton Oil Case* (204 U. S., 426), a shipper elected to maintain an action at law against a common carrier to recover damages sustained by the exaction of an unreasonable rate upon shipments made by the shipper.

This case was tried, and reached the supreme court of the United States. It was conceded by the supreme court that at common law such an action could be maintained, but the underlying question in the case was the effect of the act to regulate commerce upon the common law jurisdiction of the courts in such cases. The court reviewed the act as a whole and stated its purpose as follows (page 439):

“That the act to regulate commerce was intended to afford an effective means for redressing the wrongs resulting from unjust discrimination and undue preference is undoubted. Indeed, it is not open to controversy that to provide for these subjects was among the principal purposes of the act. . . . And it is apparent that the means by which these great purposes were to be accomplished was the placing upon all carriers the positive duty to establish schedules of reasonable rates which should have a uniform application to all and which should not be departed from so long as the established schedule remained unaltered in the manner provided by law.”

The power of the commission is stated as follows (page 438):

“Power was conferred upon the commission to hear complaints concerning violations of the act, to investigate the same, and, if the complaints were well founded, to direct not only the making

of reparation to the injured persons, but to order the carrier to desist from such violation in the future."

The court held that the commission was empowered to determine the question whether rates complained of were unreasonable and if unreasonable to fix reasonable maximum rates and order the published rate changed to comply with its order; and that this jurisdiction must be exclusive in the commission to secure that uniformity of rates which the statute was intended to secure. This was pointed out by the court in the following language (page 440):

"For if, without previous action by the commission, power might be exerted by courts and juries generally to determine the reasonableness of an established rate, it would follow that unless all courts reached an identical conclusion a uniform standard of rates in the future would be impossible, as the standard would fluctuate and vary, dependent upon the divergent conclusions reached as to reasonableness by the various courts called upon to consider the subject as an original question. Indeed the recognition of such a right is wholly inconsistent with the administrative power conferred upon the commission and with the duty, which the statute casts upon that body, of seeing to it that the statutory requirement as to uniformity and equality of rates is observed."

Summarizing the court said (page 448):

"Concluding, as we do, that a shipper seeking reparation predicated upon the unreasonableness of the established rate must, under the act to regulate commerce, primarily invoke redress through the interstate commerce commission, which body alone is vested with power originally to entertain proceedings for the alteration of an established schedule, because the rates fixed therein are unreasonable, it is unnecessary for us to consider whether the court below would have had jurisdiction to afford relief if the right asserted had not been repugnant to the provisions of the act to regulate commerce."

This case has been improperly characterized as judicial legislation for the reason that it destroyed the right to bring a common law action in a court in the first instance, to recover damages for

an unreasonable charge by a common carrier. The court construed the act so as to attain the legislative object—uniform rates—and this made it necessary that the existing common law jurisdiction should be taken from the courts and vested in the administrative tribunal. This, Mr. Justice Curtis intimated, in the quotation first cited, congress could not do. While the question of what is a reasonable rate is a question of fact, the determination of the question is arrived at by an examination of “present or past facts” and therefore is, in nature, a judicial inquiry.

In a series of cases since the Abilene Cotton Oil case was decided the supreme court has stated, with what one of the justices has denominated “tiresome repetition” that the commission has exclusive jurisdiction to determine whether an existing rate is unreasonable, and, if found to be unreasonable, to determine what would have been in the past, and what will be in the future, a reasonable rate; and to determine also what are undue and unreasonable discriminations and preferences. When these inquiries relate to present and past transactions the act is judicial, when the determination applies to future rates it is legislative in character. While the carriers have the right to initiate rates, the question of their *reasonableness* is always within the exclusive jurisdiction of the commission to determine. If rates are reduced by the commission, the revenues of the carrier from the traffic affected are reduced. The revenues, certainly the control of property, are affected, when the commission determines questions involving discrimination and preferences, the bookkeeping and the allocation of company accounts. The determination of such questions therefore involves the investigation of facts, and judicial determinations that directly affect property rights in a substantial manner. Yet such determinations are essential to the proper administration of the law.

I have presented the reasoning in the Abilene Cotton Oil Case, familiar probably to most of you, not for the purpose of showing the jurisdiction of the commission, but to show that the power of judicial determination vested in the commission is incident to, and a part of a great scheme of regulation, which

scheme is essentially legislative and not judicial in character. Because they are incident to the principal act, these judicial decisions do not fall under the prohibition of the constitution that administrative and legislative bodies shall not exercise judicial power. They come under the exceptions to that rule which permit judicial functions and powers to be exercised by legislative and administrative bodies. The making of the law is a major legislative act. The exercise of the judicial powers by the commission is an integral part of the administration of the law, necessary, as shown in the case we have been considering, to the realization of all the benefits secured by the act to regulate commerce.

IV. THE PRESENT SCOPE OF JUDICIAL DETERMINATION AND REVIEW IS SATISFACTORY

It must not be assumed that in the exercise of these great powers the commission can disregard the law creating it, or the principles of law which apply in judicial determinations. The commission is strictly under the law. The legality of its order depends upon its conformity to the law. Its orders may be reviewed by the district courts of the United States upon all justiciable issues, in a direct proceeding in equity under well defined procedure. Three judges, one of whom must be a circuit judge, sit in these cases and a majority opinion is required to annul an order. An appeal lies, from both interlocutory and final decrees of the district court, direct to the supreme court of the United States. In both courts these cases are expedited.

V. JUSTICIABLE ISSUES

The first concise statement of what are justiciable issues regarding the orders of the commission was made by the supreme court in the Union Pacific Case (222 U. S., 541, 547). Speaking through Mr. Justice Lamar, the court said:

"In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the commission acted within its power. It will not consider the ex-

pediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling."

In *Int. Com. Comm. v. Louis & Nash. R. R.* (227 U. S., 88, 92), Mr. Justice Lamar, again speaking for the court, said:

"The statute, instead of making its orders conclusive against a direct attack, expressly declares that 'they may be suspended or set aside by a court of competent jurisdiction.' . . . Of course, that can only be done in cases presenting a justiciable question. But whether the order deprives the carrier of a constitutional or statutory right; whether the hearing was adequate and fair, or whether, for any reason, the order is contrary to law—are all matters within the scope of judicial power."

The Chief Justice, speaking for the court in the *Proctor & Gamble Case* (225 U. S., 282, 297-298), said:

" . . . the courts were confined by statutory operation to determining whether there had been violations of the constitution, a want of conformity to statutory authority, or of ascertaining whether power had been so arbitrarily exercised as virtually to transcend the authority conferred * * *."

In determining whether there was substantial evidence before the commission the court will not undertake to determine the weight of the evidence or draw conclusions from it. This, as stated by the court in other cases, is peculiarly within the jurisdiction of the rate-making body. Nor will the court set aside an order because the commission has admitted evidence that would not have been admissible if objected to in a like contention before a court. The court will search the record to ascertain whether there was before the commission any legal evidence of a substantial character which, when considered by itself, would support the order.

VI. THE COMMISSION MUST ACT STRICTLY WITHIN ITS STATUTORY JURISDICTION

Reference to a few cases will show how strictly the commission is held within its statutory jurisdiction. In the *Louisville and Nashville Case* (227 U. S., 88, 91), the government insisted

that as the commission was an expert body possessed of technical and scientific knowledge upon the subject of transportation, an order based upon its "opinion" is conclusive. In response to this contention Mr. Justice Lamar, speaking for the court, said:

"But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless."

In the Electric Railway Case (226 U. S., 14, 20), the court reviewed an order entered by the commission which required the operation of standard equipment over an electric railroad. The railroad company insisted that such operation was unsafe. The commission, without notice to the parties, sent one of its expert men to examine the roadbed of the electric road. In its report this investigation was referred to and the decision of the commission was rested largely upon the private report of the expert. Reviewing this action Mr. Justice Holmes, speaking for the court, said:

"We remarked that it is stated in the commission's report that they base their conclusions more largely upon their own investigation than upon the testimony of the witnesses. It would be a very strong proposition to say that the parties were bound in the higher courts by a finding based on specific investigations made in the case without notice to them."

These two cases show how carefully the court protects the constitutional rights of parties, whose property is being affected, to a full hearing, of which they must have due notice.

In the Willamette Valley Case (219 U. S., 433, 449), an advance had been made by the railroad company in a lumber rate. The question before the commission was whether or not the new rate was unreasonable. The lumber companies proved that they had been induced, by a lower rate, to go into this valley and erect mills and therefore claimed what may be called an "equitable right" to have the old rate maintained. In the report of the commission these facts were discussed. The court, speaking through the chief justice, said:

“ when the opinion is considered as a whole in the light of the condition of the record to which we have referred it clearly results that it was based upon the belief by the commission that it had the right under the law to protect the lumber interests of the Willamette Valley from the consequences which it was deemed would arise from a change of the rate, even if that change was from an unreasonably low rate which had prevailed for some time to a just and reasonable charge for the service rendered for the future.”

This order was annulled because the commission did not keep strictly within its jurisdiction and determine only the intrinsic reasonableness of the rate.

In the Lemon Rate Case the commission heard evidence upon, and discussed the competition of lemons produced in California with Sicilian lemons, in the eastern market. The commerce court (190 Fed., 591, 594-595), speaking through Mack, Judge, said:

“An examination of the report of the commission, in its entirety, demonstrates that except for two brief paragraphs suggesting grounds for lowering the lemon while maintaining the orange rate, it deals entirely with matters tending to show the need in this industry of a high-protective tariff against Sicily and, not on traffic considerations, but to compensate for the tariff insufficiencies, a low transportation rate especially to eastern territory.”

For this reason the order of the commission was annulled.

In the Harriman Case (211 U. S., 407, 417-418, 419), the commission petitioned the court to compel a witness to testify and to furnish documentary evidence. The question involved was whether the commission had power to compel a witness to give testimony and furnish documentary evidence, in an unlimited investigation to qualify the commission to make a report to congress. The supreme court, speaking through Mr. Justice Holmes, said:

“And the result of the arguments is that whatever might influence the mind of the commission in its recommendations is a subject upon which it may summon witnesses before it and require them to disclose any facts, no matter how private, no matter

what their tendency to disgrace the person whose attendance has been compelled. If we qualify the statement and say only, legitimately influence the mind of the commission in the opinion of the court called in aid, still it will be seen that the power, if it exists, is unparralleled in its vague extent. Its territorial sweep also should be noticed. By section 12 of the act of 1887, the commission has authority to require the attendance of witnesses 'from any place in the United States, at any designated place of hearing.' No such unlimited command over the liberty of all citizens ever was given, so far as we know, in constitutional times, to any commission or court."

"Whatever may be the power of Congress, it did not attempt to do more than to regulate the interstate business of common carriers, and the primary purpose for which the commission was established was to enforce the regulations which congress had imposed."

"We are of opinion that the purposes of the act for which the commission may exact evidence embrace only complaints for violation of the act, and investigations by the commission upon matters that might have been made the object of complaint."

While a wider range is given an administrative tribunal in receiving evidence upon which to determine its administrative action than is accorded to a court exercising purely judicial powers, yet from these decisions it clearly appears that the commission may not go outside of its statutory sphere of action in making orders, nor may it compel a disclosure of private affairs not directly related to matters about which the commission has power to enter an order. With this court review embracing all questions of law, and all alleged arbitrary action, full protection is given to personal and property rights.

VII. ADVANTAGES OF THE PRESENT PROCEDURE

Transportation questions which come before the commission are complex and often far reaching. A proposed change in a single rate may affect a group or structure of rates over a consid-

erable territory. The commission must regard the single rate as a court would do if determining its reasonableness, but before making an order the commission must go farther and consider the wider effect that may be produced by a change in the single rate. Rate structures are important and should not be unreasonably impaired. Ordering out a discrimination may operate unfavorably upon railroad revenues without producing any corresponding advantage. Discriminations prohibited are "undue" discriminations. Preferences condemned are "unfair or unreasonable" preferences. In determining these questions the commission must, as stated by an English judge, "exercise common sense" and take a wider view than is involved in a mere judicial controversy between a shipper and a carrier regarding a single rate. The power and the duty of the commission is finely stated by Mr. Justice McKenna (218 U. S., 88, 103):

"The outlook of the commission and its powers must be greater than the interest of the railroads or of that which may affect those interests. It must be as comprehensive as the interest of the whole country. If the problems which are presented to it therefore are complex and difficult, the means of solving them are as great and adequate as can be provided."

CONCLUSION

When we consider the purpose and scope of this law, the magnitude of the interests involved, the complexity of the questions of fact which arise in its administration and the necessity of having all questions of fact and law determined expeditiously as a part of the administration; and when we consider the further fact that in determining these questions the rate-making body must take a broad view of the subject under consideration, and not confine itself, as a court of law or equity is restricted in its investigation to the simple controversy between the parties before it, it must be apparent to every thoughtful student that these questions of law and fact should be primarily decided by the expert rate-making body. Broadly considered, the questions are essentially legislative in character, although technically some of them fall within the general definition of judicial acts.

Considering the scope of the court review, that the commission is held strictly within statutory jurisdiction, and that any arbitrary power in a given case would render the order void upon appeal to the court, we may confidently assert that the present system for the determination of questions of law and fact in this great field of governmental action is wisely conceived and in its execution has proved satisfactory. If we may judge the wisdom of the law, and measure the satisfaction of all parties affected by the current results of its administration, we shall find abundant proof that the law is, in its general plan and working, satisfactory. During the year ending October 31, 1915, the number of formal cases decided by the commission in which published decisions were rendered was 902. Not all of these were affirmative orders which could be reviewed by a court; but a large majority were orders that were reviewable. During the same period the number of suits commenced in the district courts of the United States attacking the orders of the commission was 22. The number of cases decided by the courts during this period was 14, 13 were in favor of, and one was against the commission. The number of cases to enjoin orders now pending is 18 in the district courts and 7 in the supreme court. Without in any way reflecting upon the courts, we may confidently say that this record of opinions unappealed from and the successful maintenance of the orders in cases where appeals have been taken, is not equaled by any court of original jurisdiction in this country. This record of the commission's work bears potent testimony to the wisdom of the law and to the ability and integrity of the commission.

ADMINISTRATIVE DECISIONS IN CONNECTION WITH IMMIGRATION¹

LOUIS F. POST

Assistant Secretary, United States Department of Labor

Administrative decisions in connection with immigration are in a different class from those of the interior department and those of the interstate commerce commission as explained in the preceding papers. The interior department deals with distributions of public property and the interstate commerce commission acts judicially with reference to private rights; whereas administrative decisions in connection with immigration determine some of the most sacred of private rights as a mere incident in the execution of a public policy.

The immigration service is within the general but minutely regulated administrative jurisdiction of the department of labor.²

This is the tenth and youngest of those executive branches of the federal government that are administered by members of the president's cabinet. For its administration the present secretary of labor,³ who is also the original incumbent, is William B. Wilson, of Pennsylvania. Long-continued industrial and civic experience of varied and highly responsible kinds, and a mind naturally judicial and instinctively humane, have made Secretary Wilson exceptionally competent for the work of this department.

¹ A paper read at the annual meeting of the American Political Science Association, December 29, 1915.

² Organic Act of the Department of Labor, entitled "An Act to Create a Department of Labor," approved March 4, 1913; Immigration and Chinese Exclusion Laws collected in Regulations of Department of Labor (1915), pp. 131 to 227.

³ Organic Act, Sec. 1; "That there is hereby created an Executive Department of the Government to be called the Department of Labor, with a Secretary of Labor, who shall be the head thereof, to be appointed by the President by and with the advice and consent of the Senate."

The department is of very recent creation. Although advocated by labor organizations for nearly half a century,⁴ it was not created by congress until March 4, 1913. You will therefore notice that the secretary has had less than three years for organization. And this period is shortened by several months, during which his thoughts and energies were monopolized by problems of financing his work with scant appropriations.⁵ In so short a time and under that embarrassment, few administrative policies could be firmly enough established, or even clearly enough outlined, to warrant a subordinate official in discussing them with the slightest air of authority without instructions, and as to the subject assigned me here I am officially uninstructed. Let me advise you then that in no sense nor in the slightest degree is anything I may say on this occasion to be regarded as significant of more than my own understanding and my personal opinion.

Four bureaus were embodied in the department of labor at its creation. For a longer or shorter time three had existed and out of one of these the fourth was carved. The oldest, then known as the bureau of labor but now called the bureau of labor statistics,⁶ had operated since 1884. The youngest, the children's bureau, had been created in 1912.⁷ The other, then named the bureau of immigration and naturalization, dated back historically to 1882.⁸ Having transformed the division of naturalization of the last-named bureau into the present bureau of naturalization, the organic act of the department of labor has left all immigration functions—subject, however, to the jurisdiction and supervision of the department—with the present bureau of immigration.⁹ It is to administrative decisions in connection with the work of this bureau that my subject is limited.

⁴ First Annual Report of the Secretary of Labor (1913), p. 7; and Second Annual Report of the Secretary of Labor (1914), p. 6.

⁵ Id. (1913), p. 47, and id. (1914), pp. 9 to 12.

⁶ Id. (1913), p. 22; id. (1914), p. 56; id. (1915), p. 54 et seq; Organic Act, Sec. 3 and 4.

⁷ First Annual Report of the Secretary of Labor (1913), p. 44; id. (1914), p. 80; id. (1915), p. 72; Organic Act, Sec. 3.

⁸ First Annual Reports of the Secretary of Labor (1913), pp. 27-43; id. (1914), pp. 62-79; id. (1915), pp. 59-71; 80-84; Organic Act, Sec. 3.

⁹ First Annual Report of the Secretary of Labor (1913), p. 27; id. (1914), p. 62; id. (1915), p. 59; Organic Act, Sec. 3.

The federal laws for regulating immigration, out of which this class of administrative decisions has developed, were administered at the beginning by state officials. That method continued nine years after congress had made permanent appropriations for defraying the expense, exclusive federal jurisdiction not having been established until 1891. Under the secretary of the treasury from that year until 1903 and under the department of commerce and labor from 1903 until 1913, the immigration laws have been administered under the department of labor since March 4, 1913.¹⁰

Of those laws there are two classes. One class, immigration laws distinctively, relates to all aliens;¹¹ the other, the Chinese exclusion laws, relates to Chinese alone.¹² To facilitate administration, ports of entry are established at convenient places. Aliens entering elsewhere are subject to deportation, and at the ports of entry immigrant inspectors are stationed to investigate questions of admissibility.¹³

By amendment and interpretation the immigration laws have become alien laws, alienage rather than migration being the major fact in administrative decisions under them. An alien who lives in the United States, no matter how long his residence here may have continued, must have a care if he goes near the Canadian or the Mexican boundary line lest he stub his toe against it and fall over to the other side. His stepping back at the place where he fell, this not being an authorized port, would constitute an unlawful entry and subject him if captured to deportation to the country whence he had originally come. So would his proving to be inadmissible if he applied at an authorized port. A plea that he was not an immigrant because already domiciled here, would be unavailing. His alienage would be the decisive fact. He might have lived in this country almost a lifetime; the country

¹⁰ First Annual Report of the Secretary of Labor (1913), p. 27.

¹¹ "An Act to regulate the immigration of aliens into the United States," approved February 20, 1907 (34 Stat. 899), with its amendments as collected in Regulations of the Department of Labor (1915), pp. 131-147.

¹² Treaty of 1880 and Statutes relating thereto as collected in Regulations of the Department of Labor (1915), pp. 185-205.

¹³ Regulation of the Department of Labor (1915), p. 147-170.

of his original migration might be half way around the world; he might have no friends or relatives there; all his personal associates, property interests and family ties might be here. Yet by administrative decision he could be, in many cases he must be, kept away or sent away; and if sent away, sent not to Mexico or Canada, whose boundary line had tripped him up (for they might refuse to receive him), but possibly to a distant country to which he had become from long absence a total stranger. To put the example in another way, an alien who lives in the United States, regardless of how long, must have a care if in order to get a particular view of Niagara Falls he is tempted to cross temporarily over to the Canadian side. Should he yield to this temptation his return to the country of his domicile, though it were made within the day or even the very hour, and whether regularly at a port of entry or clandestinely, would be subject to the exclusion provisions of our immigration laws. The supreme court of the United States has so decided.¹⁴

When an alien appears at an immigration port of entry, he is primarily inspected by public health surgeons and immigrant inspectors as to his admissibility. If they approve him they thereby make an administrative decision in his favor and he is allowed at once to enter the United States. So far as "exclusion" proceedings in contradistinction to possible "expulsion" proceedings in the future are concerned, their decision is final. If the inspectors do not approve the applicant at their primary inspection of him, he is taken before a board of three inspectors where an administrative trial of his case is had. The trial is privately conducted, but the proceedings are recorded. Should this board admit him by unanimous vote, they thereby make an administrative decision which is also final. The alien is in that event forthwith released. Should the decision not be unanimous, the minority member of the board may appeal to the secretary of labor. So may the alien if the decision is against him, whether it be by majority or unanimously.

Appeals go up to the secretary of labor upon the record made by the inspectors. His decisions either way are final, for the

¹⁴ *Lewis v. Frick*, 233 U. S. 291; *Ueberall v. Williams*, 187 Fed. 470.

courts interfere only in cases in which he appears to them to have no jurisdiction. They may reverse or affirm his decisions on questions of law, but into questions of fact they do not inquire¹⁵ if there is any evidence at all in support of the secretary's conclusion.

Not to all kinds of cases, however, do rights of appeal from immigrant inspectors to the secretary of labor attach. When official surgeons certify to mental defects or to dangerous or loathsome contagious diseases, and a board of inspectors excludes upon the basis of that certificate, there can be no appeal to anybody. Such cases are beyond the reach even of the secretary of labor.¹⁶

And in cases in which an appeal does lie to the secretary of labor, or which otherwise come within his authority, the range for discretion is narrow indeed. There is in the whole system no chancery principle enabling him or anyone else to modify any intolerable harshness which the immigration law, by reason of its necessary universality, compels its administrators to inflict. It is true that the secretary of labor is invested with some discretion as to some classes of aliens ordered excluded as likely to become a public charge, and with reference also to admission to hospital treatment for some kinds of physical affliction; but there his discretion is about exhausted. In cases in which the law commands him to dismiss an appeal upon the evidence in the inspectors record, and in those in which there is no appeal, the law makes him powerless to relieve any consequent suffering however extreme.

Were a wider range of discretion lodged in the secretary, administrative decisions with reference to immigration could not be objected to consistently with the recognized right of governments to fix their own terms for admitting aliens to territory under their respective jurisdictions. Only through governmental decisions can this right be enforced by any government. But in order that those decisions may be wisely administrative,

¹⁵ *Lewis v. Frick*, 233 U. S. 291; *Lee Lung v. Patterson*, 186 U. S. 168; *Pearson v. Williams*, 202 U. S. 281.

¹⁶ Act of February 20, 1907, 34 Stat. 899, Sec. 10.

executives should not be straightjacketed with minute statutory regulations. Their discretion should be broad enough to enable them to bring good judgment and humane considerations to the interpretation and support of broad formulations of legislative policy. Administrative decisions moulded by inelastic legal machinery are incompatible with the best administration of alien immigration laws. Rectified in that respect, however, our immigration statutes might go as much farther in cataloguing the defects for which aliens may be excluded as public policy requires. Invest executive officials with the degree of freedom they must have in the interests of a wise administration of public policies involving individual suffering—a freedom which, law or no law, will almost inevitably be resorted to in cases of hardship in order to avoid outraging the common humanities and scandalizing the law itself and its administration,—do this, and (the general policy of alien exclusion being conceded) exclusion of aliens by administrative decision might be unobjectionable.

But what of the possibilities of excluding citizens by administrative decision?

Ought questions of American citizenship to be determined as incidents of executive administration? Whether they ought to be or not, they are in fact so determined. By administrative decisions, wholly nonjudicial in character, made as an incident to executive routine and with no right reserved for judicial trial or review, citizenship is awarded or denied much as a new public building may be contracted for or an old one ordered to be torn down. It is an executive act performed in the course of executive routine and under the influence of administrative precedents and habits of thought.

Such decisions usually occur in Chinese cases. Immigrants from China are subject to all the disabilities of the ordinary immigration laws and in addition to those also of the Chinese exclusion laws. Originally only Chinese laborers were excluded for being Chinese. This was in accordance with a treaty which authorizes the exclusion of laborers from China under certain circumstances. By accumulated legislation, however, and departmental interpretations over a long period, the treaty has

been thrust so far into the background that outside of a few specific classes all Chinese aliens are now inadmissible.¹⁷ But Chinese born in the United States and under its jurisdiction constitute a class apart.

Pursuant to the Fourteenth Amendment they are constitutional citizens.¹⁸ Consequently every person of Chinese lineage who comes from abroad and claims American birth raises the highest question of privilege known to the laws of our land. Yet his constitutional rights in this respect are determined by administrative decisions—in the first instance by a board of immigrant inspectors and then by the secretary of labor or one of his subordinates upon appeal. The courts will not give judicial consideration to this claim to citizenship farther than it will to the questions of an alien's admissibility. Beyond ascertaining whether there is in the record any evidence at all upon which to base an administrative judgment against citizenship, they refuse to review the secretary's decision.¹⁹

It may be said that only Chinese are concerned with this, and that they, though born in this country, retain Chinese customs and language exclusively and yield allegiance to China. A serious consideration that, with reference to Chinese-Americanism; but it is quite apart from the question of subordinating constitutional citizenship to administrative decisions. The function of administrative decisions is to execute details of public policy. Private rights, certainly fundamental private rights, belong in another category.

Nor is it true that administrative decisions determining citizenship concern Chinese alone. In principle they apply to every person of American birth whatever his race. As our immigration laws now stand, a direct American descendant of a Pilgrim Father, were he returning from a visit abroad and suffering from tuberculosis or trachoma, from insanity or imbecility, with ringworm of the nail or valvular disease of the heart that might

¹⁷ Regulations of the Department of Labor (1915), pp. 185-227; *Chae Chan Ping v. U. S.*, 130 U. S. 581; 23 Opp. Att. Gen. 485.

¹⁸ *U. S. v. Wong Kim Ark*, 169 U. S. 649.

¹⁹ *U. S. v. Ju Toy*, 189 U. S. 253.

affect his ability to earn a living, would have his citizenship determined by administrative decision. Had he been abroad long enough to have acquired an alien accent or a foreign air, the decision might be against his citizenship; and in that case it would be final, no matter how weighty the preponderance of proof in his favor. Upon any old-fashioned judge coming to the relief of this citizen who had found himself unable to satisfy the secretary of labor of his American birth, the precedents furnished by Chinese cases would fall like an avalanche.

Other than rights of citizenship, few personal rights are determined by administrative decisions incidental to the administration of the immigration laws. Inasmuch as immigrants never yet landed have no personal rights under our laws, their exclusion does not raise questions of personal rights. The questions in such cases are of national policy alone. If therefore aliens indiscriminately were not subject to our immigration laws, irrespective of their domicile and of the brevity of their temporary absence abroad, exclusion by administrative decision could be reasonably defended. As it is, however, the principle of administrative decisions in immigration cases operates repugnantly to American conceptions of the rights of domicile. The relegation of domiciliary rights in individual cases to executive power, should be almost as offensive to American thought as relegating constitutional rights of citizenship to that power should be.

If, however, personal rights determinable by administrative decisions in "exclusion" cases under the immigration laws be few, they are numerous enough in cases of "expulsion." For not only can aliens be kept out of this country by administrative decisions in certain circumstances when they apply for admission, but they can be put out by administrative decision in certain circumstances although they are actually domiciled. And not only do administrative decisions in "expulsion" cases determine questions of citizenship. They determine also questions of the property, of the personal character,²⁰ and of the marital relationships,²¹ of persons who may have lived for many years under

²⁰ *Zakonaite v. Wolf*, 226 U. S. 272.

²¹ *Lewis v. Frick*, 233 U. S. 291.

the shelter of our laws. Under the shelter of our judicial processes, however, such persons do not live—not when administrative process for alien expulsion is invoked. And it may be invoked by anyone, from the highest official conscientiously executing the law down to the meanest individual maliciously trying to “get even” with a personal enemy.

The processes in expulsion cases are extremely administrative.

They begin with a recommendation by the bureau of immigration to the secretary of labor for a warrant of arrest. When a warrant issues it runs as freely to immigration officers throughout the United States as the warrant of a justice of the peace does to the constables of a county.

This extensive power has seldom if ever been seriously abused. But think of the power itself! Does it not seem like the old “administrative process” come again? Replete with all the evil possibilities of that historic process, nothing more is needed for realization of those possibilities than the touch of an executive hand capable of grossly abusing lawful authority.

After his arrest the alien alleged to be unlawfully here is put upon trial. His trial is conducted without publicity. It is conducted even without counsel for the prisoner, until the immigrant inspector who sits in primary judgment upon the case permits the appearance of counsel. The prisoner may call witnesses in his own behalf, but his counsel cannot examine those who have testified and gone before counsel has been allowed to enter, nor any who are there but refuse to answer. Yet the prisoner’s citizenship may be at issue, his property may be at stake, his good name may be involved, and in the case of women their chastity may be circumstantially upon trial.²²

For certain offences an alien may be excluded however long his residence here, though he has never left the country for a moment, and without other adjudication than administrative decisions. In other cases the power of arresting lapses if it be not exercised within three years after the alien has come into the country. But the three-year limit is not determined by duration

²² *Zakonaite v. Wolf*, 226 U. S. 272.

of domicile; it is determined by the date of the alien's very latest arrival, and this though his absence from the country may have been but momentary. Aliens going abroad to visit after living here no matter how long, and who happen not to be excluded upon returning, may be expelled within three years after their return. They may be so expelled for any one of many causes, including mental defects of almost any kind, certain physical diseases, crimes involving moral turpitude committed even at remote periods, or as polygamists or anarchists or prostitutes. For any of those causes, though it were to have originated in this country, they must be expelled—not merely may be but must be, provided the cause originated prior to their latest return from abroad.

As to the propriety of these "exclusions" and "expulsions" I make no contention here. What I contend for raises a very different question. Lest I be misapprehended or misunderstood, let me emphasize the contention I do make here. It is that personal rights, when involved in "exclusion" or "expulsion" proceedings under the immigration laws, should not be determined finally by administrative decision. Although the immigrant inspector's record in an "expulsion" case goes as a matter of course to the secretary of labor, without whose warrant for it there can be no expulsion, yet the secretary's decision, like the inspector's, is not judicial but administrative. Therein lies the fault and the danger of it all. In most instances administrative decisions must in the very nature of administration be made by subordinates; in all instances they must be made along hard and fast lines according to unelastic legislation designed to promote a governmental policy. Determinations regarding private rights by such decisions are mere incidents of administration. Only in minor degree, therefore, can rights of property, rights as to character, rights of domicile, or even the birthright of citizenship be duly determined by administrative decisions.

Culprits of whatever race or nationality have judicial trials and appeals, and in special cases of hardship there is for them at the last a fountain of mercy in the Chief Executive. But for the hapless person, whether citizen or alien, who is arrested as an alien,

tried as an alien and found to be an alien—all by administrative decision—there is neither judicial trial nor fountain of mercy, though his case call for it never so loudly, if the secretary of labor becomes satisfied that he is in this country contrary to law. Between that alien, or that citizen administratively found to be an alien—between him and what may be the cruelest exile, there is no barrier but a secretary of labor too humane and wise to be so “satisfied” unless he thinks he ought to be.

Nothing in my official experience in the Department of Labor has impressed me more deeply than the conviction that fundamental personal rights should be more scrupulously guarded in immigration cases than is possible through administrative decisions made in the course of executive routine. As to the form this protection should take, the kind of tribunal that might be desirable and possible, even whether anything at all adequate for the purpose would be consistent with the immigration policy of Congress, I offer no suggestions at this time. All I offer now in that respect is an admonition. Whenever fundamental individual rights are at issue, their protection by some method inherently more judicial than it is possible for administrative decisions to be, is demanded no less in the interest of public policy than in the interest of personal security.

“GOVERNMENT CONTESTS” BEFORE THE ADMINISTRATIVE TRIBUNALS OF THE LAND DEPARTMENT¹

PHILIP P. WELLS

Washington, D. C.

By administrative adjudication is usually meant the exercise of quasi-judicial functions upon and in the control of vested property rights, or personal rights secured by constitutional guaranties. It often accompanies and effectuates regulative power of a quasi-legislative nature. A large measure of this quasi-legislative power has been given to the departments and bureaus dealing with the lands of the United States, but the enforcement of such regulations, insofar as they affect rights of person or vested rights of property, is chiefly by process of the regular courts. Thus the regulation of the occupancy and use of lands reserved for national forests is entrusted to the secretary of agriculture. His regulations usually prohibit acts that were theretofore innocent and customary though not vested rights. Sometimes they restrict the use of land in which there exists a vested private right of use for a particular purpose only, but the restriction does not affect the right itself. For example: A mining claim in a national forest duly located and recorded after the discovery of mineral therein is true property, but only for the purpose of mining; other use of it may be and is prohibited by regulation. Occasionally this regulative power does limit true vested rights: As when a mining claimant, having a vested right to use the standing timber on his claim for mining operations thereon, must submit to have that timber sold by the Forest Service under regulations made to prevent destructive insect infestation of adjacent public timber. Analogous powers are given

¹ A paper read at the annual meeting of the American Political Science Association in Washington, D. C., December 29, 1915.

to the secretary of the interior with respect to some of the national parks, and there are other instances of like kind. But the enforcement of such regulations is generally done through the regular courts by criminal prosecution or civil suit. It is not a process of administrative adjudication at all.

The great mass of administrative adjudication in public land matters does not restrict vested rights but enlarges them through the distribution of public property to private citizens. Adjudication is necessary to adjust quarrels and to decide whether a particular tract should be distributed or kept in public ownership. The federal public land system has existed for a century and a quarter. During the last seventy-five years administrative adjudication has been an essential part of it. There had been precedents for such adjudication in the first half century, but they were exceptional. The turning point was the General Preemption Act of 1841. That statute changed the basis of federal land disposal from sale to gift. Before that time the underlying theory was that vacant public lands are to be sold for their actual value. Since that time the theory has been that they should be given away without price or sold for a nominal price below their actual value. Under the old system conflicting desires among would-be takers of public lands expressed themselves and found their solution in rival bids at the public auction. After the change to the gift theory they found expression in contests that must be adjudicated. Of course the change was not immediate or complete. The old method and the new method lived side by side for a time, the old dying slowly as the new spread and grew strong. Today we still sell town lots and standing timber to the highest bidder, and coal lands at their actual (appraised) value, nor are these the only survivals of the old theory. But the general rule is to give something for nothing, or something great for something small. The well known example of the free gift is the homestead law, when the settler does not elect to commute his entry for cash at \$1.25 per acre. A more perfect example is the forest homestead law, which forbids commutation. These are but examples. The practice extends under certain circumstances to water rights, timber, grazing

rights, and easements of many kinds. Sales for a nominal price below actual value are illustrated by the preemption law (repealed in 1891), the general mineral land law, the coal land and timber and stone laws as administered before 1908, and the reclamation law, under which the price of an irrigated farm unit with water right is fixed at its proportionate share (according to acreage) of the cost of the government irrigation works by which it is watered, a price payable on long time credit without interest. Here also belongs the commutation provision of the homestead law.

Toss a handful of small coin into a crowd of boys on the street and there will be a scramble for them. Repeat the action indefinitely and you will need the police not only to keep order and impose rules of fair play among the crowd but also to protect you in keeping what you do not wish to give away. So it is the policy of giving something for nothing, or something great for something small, that has made adjudication of land claims a necessary incident of public land administration. Nevertheless it is only an incident. The main business is the disposal of unreserved lands and the control of those reserved, a clearly administrative function; but in certain cases, few as compared with the general mass, disputes had to be settled before the administrative officer could proceed with his main business. It was natural that he should begin by settling them himself in conformity with prevailing notions of equity and of orderly inquiry into disputed facts. The technical, tedious and expensive procedure of the courts would have been impracticable because of the great number of the beneficiaries and the poverty of many of them, if for no other reason.

Contests between rival private applicants for the public land bounty have been already discussed. I wish to speak of the cases wherein the government itself contests the application, for here has been the storm center of criticism as to public land adjudication.

One of two motives underlies each government contest: Either a purpose to keep the land for public use; or a belief that the applicant is unworthy of public bounty, especially a suspicion that

the application is being used as a means of grasping more than a fair share of that bounty. It is an essential part of the something-for-nothing policy that the share of each beneficiary be limited in order that the bounty may be enjoyed by as many citizens as possible. Hence we have limitations of the area that can be taken by one applicant. The maximum limits thus fixed for timber land (160 acres) and coal lands (640 acres) are too small to afford a basis for economical lumbering and mining operations. The capitalist who wishes to exploit public timber or coal land therefore has often tried to beat the law by using "dummy entrymen" and other devices to get title from the government for the purpose of transferring it to himself. The special agent suspects this transaction and protests the entries as really made for the capitalist and therefore in violation of the area limit. This initiates a government contest. The motive is not to keep the land, for if the government wins the contest the land will still be open to be taken by the first worthy applicant. The motive is the same as that behind the policy of the law allowing private contests. In each procedure the sole object in view is to secure for each citizen a fair chance to get the public bounty. The private contest benefits a citizen who is present to demand his share; the government contest is for the benefit of citizens who have not yet appeared but may be expected to come forward and demand their shares later. Neither procedure directly benefits the public as a whole.

There has been a prodigious amount of energy expended on contests of this character and I venture the opinion that much of it has been wasted. If large capital and large area units are necessary for working the lands they are certain to be assembled in large area units in the end. Efforts to prevent this will at last be futile. What is needed is a system whereby the capitalist can get directly from the government an area sufficient for economical operations and exploit it under adequate public control, paying to the public all that the privilege is worth. In other words the government ought to keep the lands, control their development, and get a fair price for the resource. This system now exists as to the timber and some other resources of the

national forests. It is applied in an ineffective and inadequate manner to water power sites. It is proposed for the mineral fuels and fertilizers.

Hence arise the other kind of government contests, those whose purpose is to keep the land permanently in public ownership with a view in most cases to its exploitation by private capital under lease or other method of public control. If the government has determined to keep a tract of land that is asked for as a gift by a private applicant the matter might seem to be wholly one of administration with no room in it for adjudication at all. But though the government desires to keep the land and has the unquestionable right to do so, it has declared its purpose nevertheless to let private applicants have the land under either one of two conditions: (1) If the applicant duly initiated his application before such determination and has ever since maintained it according to law; or (2) if the applicant has discovered valuable deposits of metalliferous minerals in the tract and seeks it for the mining of the same. The issues to be adjudicated in such government contests are whether or not these conditions have been fulfilled by the applicant.

They are now adjudicated by the department of the interior and it is suggested that this is a hardship for the applicant because that department is charged with the duty of keeping the reserved lands and may therefore be supposed to be prejudiced against all applicants seeking to appropriate any part of them. This has been the basis of much criticism directed against departmental adjudication. Since all critics assume the burden of proof it is pertinent to inquire what their own motives and prejudices may be.

Courts do not escape criticism at the hands of the losing party but they also get praise from the winning party. Praise and blame cancel each other in large measure and leave a general impression of fairness on the public mind. But in the case of a government contest before the land department there is no such balance. The defeated private interest raises an outcry of protest, not to say abuse, and there is no conflicting private interest to give praise. Nobody is benefited by the decision, that is to

say nobody in particular, just everybody. What is everybody's business is nobody's business. So the business of praising the administrative tribunal is neglected and the critics have the discussion all their own way. This is the more so because the public does not know and has no regular means of knowing the result or even the fact of a contest. Only under extraordinary circumstances does the controversy become so sensational as to attract public notice. This ought not to be. Information should be published regularly as a matter of routine in every case where an adverse private application is made for land reserved for the public control of natural resources. A bulletin should be issued at frequent intervals listing all such adverse applications and claims by their docket or file numbers so that the public can have access to the papers in the case so far as is consistent with orderly administration. The amount and value of the resources at stake should be stated, the nature of the application shown and its progress set forth. Until this is done we shall not have the basis for intelligent public judgment upon the defenders of public rights. So long as the public is kept in complete ignorance of the progress of government contests it is justified in regarding with deep suspicion criticism that may well have no better basis than disappointed greed. Certainly some of the outcry against public land adjudication is tainted with this origin.

Of course there are fair and intelligent critics. Their doubts and questions may be classified in four groups. In the first place they point to the difficulties that may be expected to arise from duality of function in the same hands, the function of land-withholder and that of land-giver. There is not so much duality as is supposed. The separation is most complete as to national forests. The secretary of agriculture, through his subordinates in the forest service and solicitor's office, administers them and conducts government contests for their protection before the tribunals of the department of the interior. As to other reserved resources the controlling and administrative function is the especial business of certain bureaus of the department of the interior—the geological survey, reclamation service, Indian office, and the office of national parks; also to a slight extent the

bureau of mines. The adjudicating function is in the hands of the land offices (local and general) of the same department. In the general land office itself the two functions are segregated in separate divisions. In the secretary's office there is some segregation but the two functions are united in his person.

Absolute segregation is not desirable. Whether public policy should influence the adjudication of private rights is matter for debate, but surely it is to be considered in the distribution of public gifts. The preservation of national forests and the patenting of free homesteads are equally matters of public policy. A decision between them as to any tract of land is essentially an administrative decision. Let the conserving and adjudicating functions be wholly separated and two consequences will inevitably follow: First, the conserving will be badly done because done by a tribunal necessarily ignorant of the facts and public needs; second, The department of the interior will be forced into a hostile position toward the giving policy. I do not see any room for doubt that private claimants would fare far worse at the hands of almost any conceivable court than they now do at the hands of the department. Gift distribution is not a judicial function and nothing but confusion and loss can result from attempts to make it so.

The next question is as to the safeguards necessary, for private interests. I have already indicated the need of systematic publicity to safeguard public rights. It would also protect legitimate private interests by affording a solid basis for criticism of harsh or stupid rulings. Let me add that the best additional safeguard for both public and private interests lies in the giving of wide discretionary power to the executive officer. The more you limit his powers to protect public rights the more you drive him to the inflexible and therefore harsh exercise of the powers that you leave in his hands. The pressure of public opinion, to say nothing of his own sense of duty, make this inevitable. It is safe to say that a statute so restricting executive power in land disposal as to satisfy in its practical workings the applicants who do not now get what they demand could hardly be drafted, to say nothing of its being enacted. The old forest lieu selection law came

as near to it as we shall ever get, and if that law were replaced upon the statute books tomorrow I doubt if a secretary of the interior could be found who would construe it to sanction the things that were done under it fifteen years ago. The scandal of that law has perhaps tainted every claim asserted under it and the department has been forced to invoke against them harsh rules of law under which innocent and guilty must suffer alike. Nor would they fare better in the courts. There is great outcry at this moment from oil land claimants in California just because the government is suing them in the courts. The root of the trouble is that the executive had no discretion as to unreserved oil lands, but must sell them to the first discoverer at a nominal price far below their real value. Here are restrictions upon executive power that look effective on paper. But what has happened? The executive has used all the powers it had left to keep the lands. It has withdrawn them from sale and has been sustained by the courts in so doing. It has forced the claimants to strict proof of every fact essential to validate their claims. It has brought suit for the value of oil taken from the lands without such validation. It has done all this within its lawful authority. It has used the very courts to do it, and it has done it simply because it had no discretionary power to fix a fair selling price or leasing rental for the lands. The situation with respect to coal lands was precisely similar except that the department could fix the selling price according to actual value. But this difference is vital. It explains why there is no such outcry and unrest with respect to the coal lands.

If time were available other apt illustrations could be found in the use made of the wide executive discretion conferred by statute in the matter of creating and administering national forests. No statutory limitations of executive power in those matters could have so well protected worthy private interests. The truth is that it is only through the exercise of executive discretion that we can adjust the relations of the public and the beneficiaries of public bounty upon a basis of equity and common sense.

If this be true it indicates the limits of court control appro-

priate to the matter. Is the function of courts to decide upon disputed rights? The ordinary public lands case that I have been discussing is not a matter of right but of bounty. I do not mean that no private rights can arise with respect to public lands. They may and do arise. But insofar as they do so they are now cognizable in the courts. In private contests after executive action is complete the losing party has his remedy against the winning party in the courts. In all contests the courts will remedy jurisdictional errors and the infringement of constitutional guaranties. Further than that they cannot go without quitting jurisprudence for administration.

The organization and procedure of the tribunals of the department of the interior has been sufficiently indicated by the papers of Mr. Finney and Mr. Pierce. It is clear that in both organization and procedure there is a close analogy to the regular courts. There is a right of appeal and review. Process issues to secure witnesses. Cross examination is permitted, also representation by counsel. There is a departmental bar to which attorneys are formally admitted. All this brings these tribunals within the limits of constitutionality expressed by the decisions referred to in Dr. Needham's paper. They enjoy the great advantage of freedom and initiative in the ascertainment of facts. They are delivered from the absurdities of the technical law of evidence. They may listen to anything that tends to prove the truth—an enormous gain. They may even go out and hunt for the truth on their own account instead of being limited to guessing at it through the fog of contradiction and uncertainty raised by greedy contending interests. In one particular the procedure needs amendment. It sometimes happens that the applicant in a government contest is opposed by secret reports of special agents or experts. Fairness to the applicant and sound administration for the public alike require that the applicant have reasonable notice of such reports and an opportunity to confute them by evidence and argument.

THE LAND DEPARTMENT AS AN ADMINISTRATIVE TRIBUNAL¹

CHARLES R. PIERCE

*Former Law Officer and Assistant Forester, United States Forest Service, now
Practicing before the Interior Department*

INTRODUCTION

If, for the moment, we can conceive of Uncle Sam as being Andrew Carnegie, of Carnegie's millions as unimproved real estate, and of Carnegie's intention to die poor, as Uncle Sam's liberal land policy, we can perhaps best picture to ourselves the public land administration in the United States in a nutshell. The government, like Carnegie, is unloading its vast wealth in a manner calculated to do the most good, and it is guarding itself continuously, although often futilely, from being imposed upon and cheated. The ownership of the public domain by the United States is of the highest possible title. There is no one to dispute the government's absolute ownership of it. There are no taxes to pay. The government is subject to no obligation to dispose of its land. It can keep or dispose of the land as it chooses.

In 1789 the United States government started as owner of practically all of the Northwest Territory. Later it acquired, what some geographers call the Southwest Territory, by further cession from the States. By purchase, discovery, annexation and conquest the United States acquired further holdings, so that with the exception of Texas and private holdings the government's fee simple title in the public domain extended from the thirteen colonies to the Gulf of Mexico, and from the Atlantic Ocean on the east coast of Florida to the Pacific and the Arctic Oceans. This domain is perhaps the greatest single holding of

¹ A paper read at the annual meeting of the American Political Science Association in Washington, D. C., December 29, 1915.

fee simple, undisputed title to real estate vested in any government that ever existed, except the Russian holdings.

The present policy of the government did not originally prevail. Originally the United States treated the public lands as the source of revenue, and treated the persons that settled upon the public lands as intruders and trespassers. After years of debate in congress, culminating in the leadership of Foote upon the one hand and Benton upon the other hand, the views of Benton prevailed and the United States began to dispose of its public lands for a purely nominal consideration, giving the preference to actual settlers. This was the beginning of the "preemption laws," which in 1891 became merged into the free homes act and became the modern homestead act.

During the middle decades of the nineteenth century the States were bonding themselves and voting large subsidies of money to private corporations for the construction of railroads, toll roads, canals, and for internal development. Some southern States are still laboring and struggling to pay the interest on these bonds. The middle west States asked for and received large donations of public lands for the purpose of turning the lands over to private corporations for internal improvements. Congress itself, also, gave land and financial aid direct to private corporations for internal improvements. The land grant to the Northern Pacific Railroad Company alone was of a "a territory nearly equal in extent to that of Ohio and New York combined;" *Barden vs. Northern Pacific Railroad Company* (154 U. S., 313 at 317).

We must also consider the homestead, the timber and stone, the desert land, the mineral land, the timber culture, the Oregon donation, and numerous other laws giving land to private individuals, usually in smaller quantities.

In addition to this the States received two sections, and later four sections, *out of every township* for the support of the common schools, and large grants of land in addition for agricultural colleges and other purposes. The States were also given the swamp and overflowed lands. Under rulings and statutes the States were also held to have title to the land beneath navigable bodies of

water upon the public land, and to have full control over the water in the streams, whether navigable or non-navigable, except for the purposes of navigation.

THE EFFECT OF LAND FRAUDS

Were it possible to conceive that all of the persons, the corporations, the States, the officials of the States, and the transferees of the States, are acting in entire good faith toward the United States government because of its liberal land policy, and that all of these beneficiaries of this liberality reported accurately and truthfully in the required and necessary affidavits and proofs, there would probably be no public land tribunal as it now exists. In other words, the disposal of the public lands would be accomplished through officials and inspectors without the intermediary of hearings and arguments.

The term "land fraud" has become as historic as the term "carpet-bagger," "nullification," and "mugwump." From the earliest times frauds crept in, even when the lands were sold at auction to the highest bidder to raise revenue for the running expenses of the government. Severe statutory penalties were put in force against conspiracies to prevent fair competition in bidding for public land. The land frauds have been great and small, they have been organized and unorganized and isolated, they have varied from petty larceny by false proof of the individual claimant to the colossal grab of the well organized conspiracy of great corporations. The mere fact that the statutes gave vast empires, of necessity meant that certain persons were to receive great fortunes in public lands, while the homestead, the desert land, the timber culture, and the preëmption laws meant independence to large numbers. However, the very liberality of the laws, and liberality of intention, stimulated a widespread spirit of greed that has permanently blemished names that would otherwise have lived in this country, honored for constructive service, usefulness and philanthropy.

How does fraud influence jurisprudence? It is said that the notorious Ex-Judge Terry of California in reality established

California jurisprudence, and that his notorious crookedness and tricky legal arguments were more than effective in keeping the California supreme court up to the highest pitch of efficiency.

The land department has had not one but hundreds and thousands of crooked Terrys to deal with during the past century.

If this government had had no public domain in the past, and had suddenly become vested with a large area of lands, with numerous and complicated laws to enforce, the bare administration of the laws would be an almost impossible task, while the guarding of the public domain from fraud would present an almost insurmountable obstacle, without blockading the allowance of any patents.

The land frauds, however, had caused the appointment of skilled inspectors, called "special agents;" have caused the enactment of laws making it perjury to swear falsely to necessary documents; the enactment of legislation requiring the presence of witnesses at hearings; the formulating of procedure for trials and hearings, so that the informer and his witnesses and the claimant and his witnesses may confront each other and give their testimony; and created a body of judicial decisions that are respected by all of the courts of the United States as precedents; and were it not for the fact that persons sought to abuse the high privileges granted by the government, the laws making it perjury to swear falsely to material papers, the laws requiring the presence of witnesses, the vast appropriations for inspectors or special agents, and the vast expense of hearings and contests would not be necessary.

THE OBJECT OF PUBLIC LAND LITIGATION

It may be said that every tribunal aims toward certain objects. The tribunal of the department has three objects. First, to ascertain whether the State, corporation or individual has complied with the law under which the claim is made, and to issue patent if found that the claimant has complied with the law. Second, to investigate and ascertain whether the State, corporation or person has failed to comply with the law under which the

particular land is claimed, and to cancel or reject the particular entry, application or proffer, in order to prevent the claimant from securing the patent. Third, to ascertain whether the information given to the department by an informer is sufficient to cancel or reject an application or section for certain land, and, if sufficient, to reward the informer by giving him a preference right to make application or entry upon the same land.

THE INTERIOR DEPARTMENT'S RELATION TO OTHER TRIBUNALS

By article 4, section 3, of the Constitution the power of disposing of and making rules regulating this domain was vested in congress. By Revised Statutes, section 441, 453, 454, 455, 456 and 458, congress placed general authority in the secretary of the interior and the commissioner of the general land office. Congress by innumerable acts, special and general, has enacted legislation vesting the control over the public domain in the interior department, an offshoot of the old treasury department which formerly had jurisdiction.

The supreme court, the federal courts, and the State courts have rendered innumerable decisions as to the exclusive power of the interior department over the public domain prior to the issuance of patent. The jurisdiction of the interior department *as a court* begins the moment some one seeks under an Act of congress to acquire title to the land by filing an application therefor, and the jurisdiction of the department terminates when patent is issued; *United States vs. Schurz* (102 U. S., 378).

It must be remembered that this discussion has nothing whatever to do with the secretary of the interior as an administrator of the public domain, but only with the interior department as a tribunal. Perhaps the most concise statement, as well as the most accurate, of the department as a tribunal, is found in the case of *James vs. Germania Iron Company* (107 Fed., 597 at 600):

"The land department of the United States is a quasi judicial tribunal, invested with authority to hear and determine claims to the public lands subject to its disposition, and its de-

cisions of the issues presented at such hearings are impervious to collateral attack, and presumptively right."

The supreme court has constantly held that the decisions of the interior department are those of a court and are of a judicial character, even in the approval of an *ex parte* case; Daniels vs. Wagner (237 U. S., 547); Burke vs. Southern Pacific (234 U. S., 669); Weyerhauser vs. Hoyt (219 U. S., 380); and Wisconsin Central Railroad Company vs. Price County (133 U. S., 496). These decisions could be multiplied many times.

The supreme court has also often held, not only that the interior department is a court, and that its decisions when rendered are judgments of great force and effect, not being subject to collateral attack, but the supreme court has also held that while the matter is pending before the department the courts cannot interfere by injunction, mandamus, or other process to prevent the secretary of the interior from arriving at his judgment, and from rendering his decision in a proper case; Ness vs. Fisher (223 U. S., 683). This shows that the secretary of the interior is *vested with an independence from other tribunals* so that in the adjudication of cases he is entirely free from interference or control.

Not only this, but the supreme court has held that in the execution of a law that does not fully prescribe the method by which the lands are thrown open to application and entry, the secretary of the interior is vested with full authority to prescribe regulations by which the provisions of the law can be taken advantage of; Roughton vs. Knight (219 U. S., 537).

Having seen that the secretary of the interior is vested with full judicial authority, it only remains to give a word regarding the decisions of the department. In the cases of Bishop of Nesqually vs. Gibbons (158 U. S., 155), and Northern Pacific vs. Soderberg (168 U. S., 526), the decisions of the interior department were held to be of a high order as precedents, not conclusive upon the courts but more than ordinarily persuasive.

In the case of Louisiana vs. Garfield (211 U. S., 70), the supreme court held that where the interior department had uniformly construed the law in a certain manner, which had been acquiesced in for years, the courts would not construe the law

otherwise, even though upon a matter of original construction it would disagree with the construction placed upon the law by the interior department, for fear that in so doing it would upset property rights to an alarming degree.

Having seen that the administration of the public lands has been vested in a *quasi* judicial tribunal, the question now is whether the judicial system, which the interior department has adopted, is one which stands the test of a legal tribunal. The question whether it is necessary that a tribunal follow a certain prescribed form under the guarantees of the United States constitution, was discussed by the supreme court of the United States in the case of *Kenard vs. Louisiana* (92 U. S., 480). The supreme court there laid down the rule that a person is not deprived of his constitutional guarantees, where there is ample provision for a trial before a court having jurisdiction over the subject matter, with a process for bringing the case, and for bringing the parties before the court for trial, with an opportunity given to present both sides; a deliberation upon the law and facts as presented; a judgment by a court; and ample opportunity for either party to appeal from the judgment of the court to the highest court of the State. There must, therefore, be shown to be, before the interior department process for giving a party a chance to present his case against another party, and for giving the party attacked the right to present his defense, a deliberation and decision upon all of the facts, and a privilege of appeal and review.

In the case of *Peyton vs. Desmond* (129 Fed., 1), Justice Van Derventer, while a justice of the circuit court of appeals, stated that the interior department was required to give a party an opportunity to be heard in his own defense before rendering a judgment against him.

Having seen what is generally required of a tribunal under our system of government, and having seen that the interior department is a court, we might now inquire as to the limitations of its authority before proceeding to a further discussion of its system of administering justice. In the first place, in the cases of *Daniels vs. Wagner* (237 U. S., 547); *Burke vs. Southern Pacific* (234 U. S., 669); *Ness vs. Fisher* (232 U. S., 683), and in other cases,

the supreme court says that the secretary of the interior in the exercise of his judicial functions cannot act arbitrarily, capriciously or in disregard of the limitations imposed upon him by law.

It is a general principle that after patent the jurisdiction of the interior department ends, and, if a person has been wrongfully or illegally deprived of his right to public land by the interior department, which awarded a patent to another, the party so deprived may bring an action in equity to have the patentee held as a trustee; *Duluth Railroad Company vs. Roy* (173 U. S., 587); *Ard vs. Brandon* (156 U. S., 537); *Daniels vs. Wagner* (237 U. S., 547).

Its relations, therefore, to other tribunals is one of absolute independence.

THE ADJUDICATING OFFICIALS

The control over the public lands, vested in the interior department, is the result of statutes enacted by congress and by a century old practice. We have referred to the statutes vesting general authority in the secretary of the interior and the commissioner of the general land office. Registers and receivers are provided for by Sections 2234 to 2247 of the Revised Statutes. The registers and receivers, while subordinates to the commissioner of the general land office, have powers and duties prescribed by law, and receive their appointment from the president of the United States, which appointments are confirmed by the senate.

For all practical purposes it may be stated that every action relating to public land, except directions to them, originates in the office of the register and receiver. They are in charge of a district land office, usually composed of several counties of a State in which there are open, public lands. They are in full charge of their records and tract books. Every attempt to acquire public lands takes the form of an application and is originally filed in the office of the register and receiver. Every adverse proceeding, of whatsoever nature, is initiated by the service of notice by the register and receiver. Every proceeding that takes the form of a hearing is either tried before the register and receiver, or before commissions issued by them to other officials.

The register and receiver mainly are required to carry out with exactness the orders issued to them by the commissioner of the general land office, in accordance with either general or specific circulars of instructions. They have a certain amount of discretion in some matters, and their actions in such instances bind the government. In the main, however, the action of the register and receiver is originally controlled by the commissioner of the general land office. Every action is reviewed, whether coming before the commissioner upon appeal or not.

The commissioner of the general land office is an official appointed by the President of the United States. He is actually in charge of the administration of the public lands. His action in practically all matters binds the government. Although a right of appeal to the secretary exists from the decision of the commissioner of the general land office in many instances, and although lists of indemnity lands by railroads and States require the signature and approval of the secretary of the interior, before the commissioner can issue the patent, in the vast bulk of the cases the commissioner's action and decision are final.

The general land office is divided into divisions, with several clerks and a chief in charge. Between the division and the commissioner is the board of law review. Usually in a private corporation the work that comes before the clerk is of a highly routine character, and the more responsible work is carried on by a very few highly paid specialists. The land office work is entirely different. Upon the clerks in the divisions of the land office the vast burden of the original adjudication of cases falls. Each commissioner's opinion is prepared by a clerk, except in extraordinary cases. Each clerk, therefore, for all practical purposes, renders the decisions adjudicating property rights that may amount to thousands of dollars. The work placed upon the clerk is as responsible as that placed upon the shoulders of a county judge.

The clerk originally examines either *ex parte* or controverted cases under the direction of the division chief, who assigns the cases and may overrule the clerk. The clerk must give the work before him a high quality of skill and legal ability. While he is

governed by the various circulars and decisions affecting his work, the burden is upon him to make up a statement of the facts, which are seldom changed, and he is not limited by the published decisions of the department.

It may happen that a clerk of one division and a clerk of another division may have precisely the same legal question before him, and each after research may arrive at an entirely different conclusion. It would be utterly impossible to expect the commissioner of the general land office to bear in mind the numerous rulings, but this is the function of the law board. The law board forms the legal clearing house of the general land office. It may be consulted preliminary to preparing decisions, and it also reviews decisions after they are prepared. The commissioner of the general land office takes no action that cannot be recalled or reversed by the secretary of the interior, except the issuance of patent.

The secretary of the interior is the executive head of the interior department. He is also the supreme court of land appeals. The secretary, however, does not, except in a few selected cases involving matters of great public policy, attempt actually to adjudicate appeals himself. This is usually committed by him to an official known as the first assistant secretary of the interior. Under the first assistant secretary is the solicitor of the department, the board of appeals of the interior department, the first assistant attorney and a large number of assistant attorneys. Before the secretary come the appeals in land cases from the commissioner of the general land office. It may be said that practically every controverted case, except decisions by the commissioner of the general land office against the government in a government contest, comes before the secretary of the interior upon appeal.

THE APPLICATION

It may be said that the adjudicating officials of the department of the interior acquire their jurisdiction by the filing of an application in the local land office by a claimant before the local land office. Until an application is so filed the purpose of a

claimant to acquire public land is unexpressed. "The Department can know nothing of it;" *W. E. Moses Land Scrip and Realty Company* (34 L. D., 458).

The one purely *ex parte* action before the land department is the application. An application may be variously known as a selection, a sworn statement, a declaration, or a proffer.

The application, therefore, is the initiatory act on the part of the claimant that gives the *judicial authority* of the department its jurisdiction; *Weyerhaeuser vs. Hoyt* (219 U. S., 380 at 387).

The second step in an application proceedings is on the part of the land officials, allowing or rejecting the application. The act of accepting the application, which may be termed to be the acquiescence or consent of the land department on the part of the United States, is judicial. It is then that a contract is entered into between the United States and the applicant, *but not before*. Then the application becomes an entry.

Entries are either interlocutory or final. A homesteader or a claimant under the desert land law receives an interlocutory entry which entitles him, not to a patent, but to possession of the land, with the privilege of beginning or continuing his compliance until he makes full compliance. Then he makes proof, which upon acceptance becomes a *final* entry. Applications to purchase of all sorts, or proffers to exchange, or selections, or sworn statements, are not usually applications for interlocutory entry. They are usually applications for an immediate, final entry, and upon allowance become final entry.

The register and receiver are authorized to accept interlocutory entries, final entries in homesteads, desert land, and applications under similar laws.

The commissioner of the general land office allows ordinary scrip applications. The secretary alone is authorized to allow indemnity selections of States and railroads; *Wisconsin Central Railroad Company vs. Price County* (133 U. S., 496). Although where the statute is silent the secretary may place the jurisdiction in the commissioner to approve a selection; *Cosmos Company vs. Grey Eagle Company* (190 U. S., 310).

The allowance of a final entry means the entryman is entitled

to a patent. He is then the equitable owner of the land and entitled to exclusive possession thereof; *Bothwell vs. Bingham County* (237 U. S., 642). The States and the courts treat the final entryman as the real owner of the land. He is subject to many forms of legal process. The land is subject to barter and sale. It is subject to state taxation. The title, however, actually remains in the United States and the land and the entry is within the jurisdiction of the interior department until patent issues: *Hussman vs. Durham* (165 U. S., 144); *Sargent vs. Herrick* (221 U. S., 404).

EX PARTE PROCEEDINGS

The prosecution of an application to the issuance of a patent, or until it is rejected, may be wholly *ex parte*. The rejection of an application, or cancellation of an entry, for lack of compliance with the law may take place. Mere failure to comply with the law involves no moral taint.

An order holding an entry for cancellation is always appealable. Usually the defect is clearly pointed out in the order and a limited time is allowed within which to correct the defect if curable.

If it is determined to cancel the entry upon a dispute as to the proofs filed, the proceedings are called adverse proceedings.

ADVERSE PROCEEDINGS

The object of adverse proceedings is to secure the rejection of an application or the cancellation of an entry; that is, to prevent the issuance of a patent.

We have considered, heretofore, the case of where an individual, a corporation, or a State, *makes application* for lands under an act of congress. In these proceedings, which are purely *ex parte*, it is a matter solely between the United States and the applicant, with the interior department as the court to determine whether the law has been complied with.

The great abuse of the land system is the bad faith of individuals and corporations toward the United States and toward

other and adverse claimants. This consists mainly in the filing of false affidavits and false proofs, amounting in some instances to criminal perjury, and in other instances not amounting to perjury because the particular document sworn to falsely was not specifically mentioned in the statute. If the proofs and affidavits filed by persons and corporations with respect to their claims were approximately true, there would be no need of any particular elaborate system of jurisprudence because the department would be enabled by an examination of the proofs and affidavits filed, and by an inspection on the ground in case of conflict, to determine in each and every instance the priority of rights.

Unfortunately, however, this is not possible. From the earliest times there has been brought to the attention of the land officials complaints that the proofs, affidavits, and the like, were not true. How these were dealt with in the early days is of no interest here. Certain of the old decisions show actions thereon, that now would be regarded as highly arbitrary. It is not possible now to cancel an entry or reject an application without full opportunity being given to the entryman or applicant to be heard on his own behalf; *Peyton vs. Desmond* (129 Fed., 1).

The best known of these adverse proceedings is the contest.

THE CONTEST

The contest is a statutory right that was given by act of congress, May 14, 1880 (21 Stat., 140, Sec. 2), and extended by other acts, notably the act of March 3, 1891 (26 Stat., 1095, Sec. 2). A contest is identical with an ordinary law suit, except that in a contest, if the entry or application is canceled, the contestant or informer receives the right to make entry *as a reward for securing the cancellation of the entry*. In an ordinary action at law, where one party sues the other party for premises, if the plaintiff is successful, the judgment is that he and not the defendant is entitled to the possession or title of the premises. In a contest the entry or right to the land is canceled or rejected, and the contestant is given thirty days preference right within which to enter the land himself. Probably in no other system of jurisprudence

is a mere informer given such a high privilege, or dignified to such a high degree.

A contestant is required to pay all of the expenses of securing the cancellation of an entry, except the expenses of the entryman or defendant in introducing his own testimony by his own witnesses.

The contest originates by a pleading, called the contest affidavit, which is sworn to by a private individual known as the contestant or informer, alleging in general language the facts that constitute the alleged lack of compliance, the alleged illegality or fraud on the part of the entryman or applicant, verified by the affidavits of two persons. This may be denied by the defendant under oath. If not denied the contestant wins his case by default. If denied, a hearing is ordered in which the testimony may be taken before the register and receiver, or in the county where each witness resides by deposition under the state laws governing the taking of depositions. The evidence taken is considered and a preliminary decision is recommended by the register and receiver to the commissioner. This decision of the register and receiver has about the same weight as the recommendation to the court of a master in chancery.

There is a right of appeal to the commissioner of the general land office, but even in the absence of an appeal the commissioner of the land office may make an appropriate decision either affirming or reversing the decision of the register and receiver. Usually, however, in case of a default the commissioner affirms the decision of the register and receiver. If, however, there is no appeal from the register and receiver to the commissioner, the commissioner's reviewing decision is final and there is no right of appeal to the secretary of the interior by the defeated party.

Otherwise the decision of the commissioner is subject also to an appeal to the secretary. Either party, disappointed in the decision of the secretary of the interior, has a right to file a motion for rehearing. Upon final decision upon motion for rehearing the defeated party has the right to file a petition for the exercise of supervisory authority. The practice varied from time to time as to whether these motions for rehearing had to be

served upon the opposite party. At the present time the motions need not be served, thus departing from the present tendency of the federal courts. If a motion or petition is entertained by the secretary it must thereafter, within the time specified, be served upon the opposite party who is required to make answer thereto.

THE PROTEST

The protest is the older of the adverse proceedings, and goes back to the time when land practice was more or less informal.

Up to 1910 a protest may have been one of four kinds:

First, a contest could become a protest at any time by the contestant defaulting or refusing to advance the costs. Thereupon the case would proceed to a conclusion and, if the entry was cancelled, no preference right was awarded.

Second, an informer could allege against an entryman, or his entry, under oath and verified by the affidavits of two witnesses, facts sufficient to cause the cancellation of the entry, *without claiming a reward or preference right for his action*. He could assume the entire expense of the proceeding merely because of public spiritedness or otherwise. Such actions, however, are extremely rare, although there is nothing to prevent such an action taking place. At the present time, since 1910, all informers who do not desire to claim a right to enter the land as a reward, or do not allege an interest in the land, adverse to the entryman, can only be a witness, for any such complaint is now forwarded to an official, called the chief of field division, of whom we will speak directly.

Third, a protest may be initiated by those persons who claim an interest, adverse to the defendant, in the same land. A person may file a homestead application upon certain land, and another may locate the same land as a mining claim. He then protests the homestead entry and files a proper complaint which alleges that the land, as a matter of fact, is mineral in character. The protestant thus claiming an adverse interest in the land must also pay the expenses of the proceedings. Such a protest, with the exception of the award of a preference right, is in every re-

spect similar to a contest. It is also similar to the first form of a protest, which we have mentioned, except that the party intends to benefit by the protest proceedings, while in the first sort the party does not intend to benefit.

Fourth, the next proceeding has been called a government protest, or often a government contest, although no one is awarded a preference right. The interior department maintains a trained corps of inspectors, known as special agents. These officials have been maintained by the department for a number of years. It was found necessary to have a trained corps of men investigate the various entries on behalf of the United States in order to determine whether fraud exists, or whether the land is of the character alleged by the applicant who seeks to secure a patent. These inspectors perform services very similar to detectives, although perhaps with considerably more openness, for the reason that their presence being known, acts as a deterrent.

The public land States of the United States are divided up into districts, and in each district there is usually at the principal city an official known as the chief of the field division, who has charge of all the special agents in his district. Public spirited persons, and others who feel that certain entrymen, or applicants, or corporations, are not complying with the law, or have or are committing fraud, write letters to various officials, from the president of the United States, the secretary of the interior, down to the commissioner of the general land office. All complaints, from whatever source, by voluntary complainants who do not desire to make entry of the lands, are investigated by special agents, who also investigate matters that come under their own observation, or are otherwise brought to their notice, or are required to be investigated by orders of superiors. The special agent makes a report upon the claim, which forms the basis of further proceedings by the government. This report is transmitted to the commissioner of the general land office, in whose office it is reviewed, and, if found sufficient to warrant proceedings, adverse proceedings are directed under the signature of the commissioner. Thereafter the proceedings are similar to those of the other protest or contest, as the government is the complainant and pays the costs of the suit.

DOES THE INTERIOR DEPARTMENT TRIBUNAL DO JUSTICE?

Let us consider how the effect of departmental litigation may be tested.

(a) Appeals: It is sometimes said that the right of appeal is often useless in administrative tribunals because the whole object of the officer appealed to is to affirm the one appealed from. This can not be considered a valid criticism of either the commissioner upon his consideration of appeals from the local land office, or the secretary upon his consideration of appeals from the commissioner. In both cases the proportion of reversals encourage the litigant, who feels that the prior decision does him an injustice, to appeal from the lower tribunal to the higher tribunal.

(b) Expense: Is the cost of litigation in the interior department expensive? When we consider that an applicant secures his land at a low rate, when we consider that the fees of the local officers are light in the individual cases, there are no costs in the ordinary sense of the term, except purely nominal costs for proceedings from the office of the register and receiver through to the secretary of the interior, and there is no requirement for the printing of briefs or arguments on appeal, we doubt if there can be found any tribunal in the world where the actual cost of litigation is so cheap as litigation before the interior department.

(c) Do the cases stand the test of scrutiny? The supreme court has in numerous cases recognized the right of any person, deprived of his right before the interior department, to institute a suit in the courts to have the subsequent patentee compelled to hold his patent in trust for the prior claimant. It is true that in numerous instances the patents issued after litigation in the interior department have been held wrongfully awarded. However, from the hundreds of patents issued each month for the past hundred years, the fact that there has been no successful legislation limiting the authority of the interior department, or giving a right to appeal to the courts, and the fact that the cases where courts have denied applications to hold patentees as trustees are innumerable as compared to cases where such actions have been

allowed, appears to be the best answer that can be given to this criticism of the department. It is entirely true that the department has from time to time rendered erroneous decisions that have not stood the test of court constructions, but these instances are by no means general.

(d) Can the department stand the test of changes? The department has stood tests that ordinary courts might fear being subjected to. In 1891, numerous ordinary laws were repealed and new laws were enacted. In fact, nearly the whole body of the land law was recodified. Numerous changes of the homestead laws, the desert land laws, the mineral land laws, and the like, have been made practically without warning, and prompt notice thereof has been issued publicly, and the changed enforcement has been rapidly administered. The tremendous land frauds, unearthed in Oregon, implicating prominent men in business, social and political life, instead of breaking down the department's tribunal, were met and handled effectively. The change that grew up, known as the "Conservation Movement," was met and made a part of the public land system practically without an additional statute, except the act of June 25, 1910 (36 Stat., 847), which was held by the supreme court of the United States, in the Midwest Oil Company's case (236 U. S., 459), to have been an unnecessary change.

(e) Are its rulings respected? The opinions rendered by the department from time to time have had the respect of the courts generally; Northern Pacific vs. Soderberg (188 U. S., 526). The interior department, on the other hand, for years declined to follow the federal courts and the supreme court in principles, such as were announced in the case of Sjoli vs. Dreschel (199 U. S., 565). The supreme court of the United States finally in the case of Weyerhaeuser vs. Hoyt (219 U. S., 380), very gracefully followed the rulings and practice of the interior department, and characterized its own previous opinions upon the same subject as *dicta*.

(f) Permanence: The interior department as a tribunal stands high. It is the belief of the writer that as long as there are public lands, there will be no change in the jurisdiction of the land

department. I firmly believe that the interior department stands out, not only as the best justification for its own continuance as an administrative tribunal, but also that having weathered the greatest of difficulties during its tempestuous history, it would be a profound error now to create a new tribunal.

THE BOARD OF APPEALS, DEPARTMENT OF THE INTERIOR¹

EDWARD C. FINNEY

Member of the Board

In order to understand the reason for a board of appeals, and something of its functions, it is essential to have a general idea of the system of handling and disposing of the public lands, their resources, and all other matters within the jurisdiction of the department of the interior.

It has been the wise policy of the United States so to dispose of its lands and resources as to encourage the establishment of homes and the extraction and use of minerals, rather than to seek to derive a revenue therefrom. The agricultural lands of the public domain are freely given to citizens who will establish their homes, erect improvements, and cultivate the soil. The taking of the minerals is permitted under what amounts to a gift, conditioned upon certain development work; so with the use of water for irrigation, for power, and for municipal and domestic purposes.

Through the general land office the department of the interior disposes of the lands, minerals, and the right to occupy the public domain for the conservation and transmission of water and power. Through the reclamation service it builds irrigation projects and aids the settler in learning the art of farming and fruit growing by the application of water to the desert. Through the geological survey it explores the mountain fastnesses for coal, oil, and other minerals; classifies them, and gives to the public some idea not only where the minerals may be found but their quantity and accessibility. Through the bureau of Indian affairs it deals not only with the personal well-being of the Indians but with their reservations and tribal lands and the resources

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therein. For the acquirement, possession, or use of these various lands and resources there is a keen rivalry among citizens, and the more valuable, the keener the rivalry. This necessitates an adjudication of the priorities and relative rights of citizens and a consideration of the laws applicable thereto, as well as the equities of the parties in interest.

With respect to the public lands and resources particularly, a well-defined system of administration and adjudication has existed for fifty years or more, and rules of practice and regulations somewhat analogous to the rules of courts have been evolved for government. In matters involving the acquisition or use of the public lands and their resources, for instance, provision is made for primary tribunals or trial courts in the shape of local land offices, situate in the immediate vicinity and presided over by officers known as the register and receiver. Before these officers filings or claims are presented, contests initiated, trials had at which evidence is presented, reported stenographically, and, upon the records so made up, the register and receiver render their decision. The parties aggrieved have the right of appeal from this tribunal to the commissioner of the general land office, in whose bureau a legal force review the entire record as made up and prepare decisions for the approval of the commissioner. From the decisions of the latter officer, appeals are allowed to the secretary of the interior, whose position in such cases is somewhat analogous to a supreme court or court of last resort. It is important, therefore, that in the office of the secretary of the interior, appealed cases shall have a thorough review, both as to the law and facts, and that cases be disposed of as nearly as may be in strict accordance with the law and the facts, and a force of skilled lawyers is occupied in the consideration of records and the drafting of tentative decisions for the consideration and approval or disapproval of the secretary of the interior. In a somewhat similar way the public has been accorded the right of appeal to the secretary from the final action or decisions of the reclamation commission, of the director of the geological survey, the commissioner of Indian affairs, and the commissioner of pensions. The thousands of cases so transferred to and considered

by the secretary render it absolutely impossible for him to give personal consideration to all, and he must rely upon the summary of facts and the presentation of the law by subordinates, although in the more important or complex cases he does find time to give them personal consideration.

The fact that many of these cases involve the homes, fortunes, or personal well-being of parties litigant makes it vitally important that each case be given most careful attention, so that the law may be fairly and impartially administered and that equity be done wherever possible. It is also important that the decisions in cases involving like principles shall be uniform and that when precedents have been established that they may be adhered to, so that the public may be guided in the future thereby. Where a number of lower tribunals or where a number of individual attorneys in the secretary's office are engaged upon the work of reviewing these numerous cases, it is vitally important that some reviewing body shall harmonize and coördinate the decisions, establish and maintain a just and uniform practice, and exercise a general supervision and outlook over the entire field. It is further important that some administrative authority control the assignment and output of the work, see that cases are considered in their regular order, not delayed or overlooked, and also see that they are disposed of within the shortest practicable time consistent with their full consideration.

Realizing the situation, Congress in 1913 provided for the establishment in the interior department of a board of appeals consisting of three members, to be appointed by and be under the control of the secretary of the interior. This board consists of experienced lawyers familiar with the practice and procedure of the interior department and its various bureaus and with actual conditions in the public-land districts, which include territory from southern Florida to the Arctic Circle. This board is charged with general review work of the office of the secretary of the interior in public land and miscellaneous matters, and such other work as the secretary may from time to time direct it as a whole, or any individual member thereof, to perform.

The board sits in all oral arguments made in pending cases by

attorneys and claimants, and in addition requires attorneys of the force of the interior department to appear before it personally and present orally the facts in important cases where the claimants are not represented by local counsel. All decisions prepared are considered and reviewed by the board, careful attention being given to the facts in each case, to the applicable laws, and to the equities of claimants in cases entitled to equitable consideration and disposition.

Since the creation of the board there has been a marked increase in the number of cases decided and disposed of, and the arrearage of pending cases has been reduced from approximately 3,000 to 800. The benefits so far found to have resulted from the creation of the board may in part be summarized as follows:

1. Large increase in work disposed of.
2. More thorough and careful consideration of all cases.
3. Improvement in the character of decisions.
4. Stability and uniformity of decisions rendered.
5. Relief in part of burden of consideration of cases heretofore imposed upon the secretary of the interior and consequent opportunity for him to devote more time to administrative matters.
6. Full consideration of all facts and equities in the cases, to the end that substantial justice and equity may be extended to all litigants.

In addition to the matters enumerated, the board, or members thereof, frequently act in advisory capacity to the secretary of the interior with respect to matters arising in the department, and by reason of their intimate and general knowledge of conditions derived through their work are called upon to aid in the drafting of legislation affecting matters within the jurisdiction of the department of the interior.

Under the law, the board of appeals in and of itself has no final authority or power, but acts in an advisory capacity to the secretary of the interior. There has been some suggestion that its powers should be broadened so as to make its decisions final and not subject to review by political officers. Whether this change would be advisable is somewhat doubtful. Secretaries of the

interior are usually broad-minded and capable men and not disposed to permit politics or expediency to influence them in the decision of cases; nor are they likely to overrule the recommendation made to them unanimously by the board of appeals after it has fully gone into the law and facts of a case. Furthermore, the secretaries usually come to office directly from the people, familiar with conditions from the viewpoint of the outside business man or lawyer, with new and improved ideas as to general policy, and are thus able to suggest improvements in existing laws and regulations, and blend in the exercise of the office the administrative and judicial functions. The present system has been found to work well from the departments' standpoint and the general opinion of those vitally interested seems to be that it is conducive of expedition, fairness, equity, and uniformity in the handling of appealed cases.

There have been suggestions made from time to time that the adjudication of land cases should be transferred to the courts, but this demand seems to come largely from claimants or attorneys who have been unfortunate enough to be upon the losing side of cases. It is manifestly impossible for the interior department, or for any other tribunal, to render a decision in a contested case involving two or more parties which will be satisfactory to *all* concerned, and the transfer of jurisdiction could not cure this condition. It would result, however, in a very material increase in the time required to dispose of cases, because practically all of our courts have already more legal business than they can dispose of in a reasonable time. This would not be the most serious feature, however, to the claimant. Before the courts he would be required to employ an attorney and to have made up elaborate records, required in most places to be printed, the procedure involving an expense which the average claimant would be unable to bear. The result would be that the man with money would have a tremendous advantage and the poor man might lose a meritorious case through inability to proceed. Before the interior department he is not required to do any of these things. His appeal and argument may be written by himself, presented by himself, and will receive the same careful

and painstaking consideration as if he were represented by the ablest lawyer of the land. Thousands of homesteaders and others who can not afford to retain lawyers file their own appeals, in their own simple language, and the department sees that they have all that the law allows and that equity is done in cases where the application of equitable doctrine is proper. The decision of the interior department is final as to the facts and very persuasive as to the law, the courts generally following it. However, it is not impossible to secure a legal review of questions of law, for after the interior department has issued its patent for a tract of land, if it has made an error of law, the matter can be brought into the courts and there tried out. The fact is, however, that comparatively few of the cases are so taken to the court, and those generally are the ones involving large values where both parties are able to bear the heavy expense incident to such litigation. No court could or would give to these homesteaders, mineral and other claimants the patient advice and assistance which they receive from the department of the interior, and I do not hesitate to say that in the long run substantial justice and the well-being of all our people is best secured by the system which has been in force for so many years, and which recent improvements and new laws have brought to a high state of efficiency.

It is not the purpose of congress in developing and disposing of the public resources to involve our citizens in a mass of technicalities or to afford lawyers a forum for long-winded arguments upon moot questions or upon matters of the "letter" rather than the "spirit." On the contrary, it is the purpose to give to each qualified citizen of the United States, rich or poor, educated or uneducated, an equal opportunity to secure his home upon the public domain or to take his part in the development of our material resources under a system which will compel him to meet the law's reasonable requirements but under which he shall, without undue technicality or delay, secure substantial justice. To so administer the law and to thus aid in the well-being of our country is the constant effort of the board of appeals and of the entire department of the interior.

STANDARDIZATION OF SALARIES AND GRADES IN CIVIL SERVICE¹

ROBERT MOSES

Bureau of Municipal Research of New York City

The purpose of salary standardization is briefly:

To furnish a simple and logical classification of all employments, with general descriptions of duties, appropriate titles and rates of compensation, qualifications and conditions governing advancement, for purposes of appropriation, financial and civil service control, information to present and prospective employes and to the public. Salary standardization would be a relatively simple thing if a single government agency, backed by a strong executive, were empowered to develop a new classification and put it into effect. This, however, is not generally the fact. For example, the following agencies are involved directly or indirectly with salary and grade standardization in New York City:

1. The state legislative body which has the power to make laws governing the organization of departments, the fixation of mandatory salaries, etc.
2. The board of estimate and apportionment, which initiates all appropriations and prepares the budget.
3. The board of aldermen which passes upon the budget as presented by the board of estimate, which may reduce this budget and which consequently has the final power to establish or to refuse to establish positions.
4. The civil service commission which as the official employment agent and personnel board for the city, controls the entrance of the employe into the service and his subsequent promotion,

¹ A paper read at the annual meeting of the American Political Science Association in Washington, D. C., December 29, 1915.

fixes titles and controls the performance of work under these titles.

5. The state civil service commission which is empowered to investigate the acts of municipal commissioners and to remove the commissioners on charges, and whose consent must be obtained before there can be any changes in the rules of the municipal commission.

6. The mayor to whom, as executive over the majority of city departments, the heads of these departments are responsible; the comptroller as head of the finance department; and the borough presidents who, as administrative heads of the borough governments, have the control of policies affecting the personnel under their jurisdiction, subject to such limitation as may be fixed by the authorities mentioned above. They submit the original budget requests upon which the board of estimate acts and make the original recommendations governing promotion and advancement. The consent of the mayor as well as that of the state civil service commission must be obtained before any changes can be made in the rules of the municipal civil service commission.

There are similar overlapping agencies which control personnel in almost every government unit. In state governments, the legislature is more active and powerful in controlling personnel, especially where no executive budget system has been built up. In small cities where civil service control is not so well established and where the mayor, council or city manager control the government more directly, there are fewer checks and balances and fewer overlapping agencies.

Standardization of salaries and grades has had practically the same objects and a similar history in all government agencies since the Chicago civil service commission began this work some years ago. It will suffice to give a brief history of this work in New York City, which is just completing its standardization program. This history is not dry and dull as some may suppose from reading printed salary schedules, but is of very real interest to all students of government. A student who wishes to see city government as a whole and all classes of city employees at work, who wishes to observe the cumulative results of mis-government

and extravagance in the past, and to feel the undercurrents of politics and the influence of public opinion, will find no more interesting and suggestive field of study than that afforded by a standardization program.

Standardization of salaries and grades of New York City employes was initiated through a resolution offered to the board of estimate and apportionment by the borough president of Manhattan, Mr. McAneny, at a meeting of the board on October 31, 1910. In accordance with the above resolution, a committee was appointed by the mayor and an appropriation of \$35,000 to carry on this work was included in the budget for 1911. Although repeated efforts were made by the bureau of municipal research during the year 1911 to have the work as outlined undertaken, nothing was done during that year. Toward the end of the year 1911, Mr. McAneny and Mr. Mitchel offered resolutions urging the immediate commencement of the work of standardizing salaries and grades, scientific budget work, a school inquiry, etc. The board of estimate made an appropriation for this purpose, which the board of aldermen refused to pass. The mayor failed to veto the board of alderman's action and consequently the 1912 budget contained no appropriation for salary standardization work. During the spring of 1912, an informal study was made of the finance department for purposes of salary standardization. Later a sub-committee of the main committee was appointed together with representatives of the civil service commission and the bureau of municipal research to continue the standardization study begun in the finance department, and the board of estimate passed a resolution authorizing the transfer of \$25,000 to carry on the work.

A staff was organized in the fall of 1912. During the first six months, the committee, its advisers and its examiners devoted their time to gathering basic information, drawing up tentative specifications and doing other work incidental to the proper launching of the program. During the next year the work of the committee was not prosecuted with the same energy as during the first six months. This was due, in part, to defects in personnel, organization, direction and procedure, and in part to

obstacles encountered in dealing with officers and employees in the various departments. Considerable progress was made in the preparation of the personal service cards, but because of inherent defects in the description of duties on the cards and because many were inaccurate and others were allowed to become obsolete, the general result was that they could not be used either for standard specifications, organization charts or final appraisals. Up to this time there was no agreement on a proper classification; no first-hand study had been made of the various groups of city employees; no program of conference with these employees and with superior officers had been arranged; no agreement had been reached as to proper grades and salaries or as to the principles which should govern increases within grades. Organization charts were prepared in great detail before any definite plan had been adopted either as to the principles which should govern their preparation or as to the uses to which they were to be put. Before half the departments had been charted, the first charts had become obsolete and no method had been adopted for bringing them up to date. As a net result the greater part of the work of this year had to be done over again.

In the spring of 1914, the bureau of standards of the board of estimate and apportionment was created and all the work of the salary standardization committee as well as the staff of the committee was transferred to it. Shortly after the establishment of the bureau of standards, the bureau of municipal research began an active coöperation in its work, which has continued up to the present time. In October, 1914, a resolution was included in the terms and conditions of the budget providing:

1. "That vacancies . . . shall be filled only after certificate by the duly authorized representatives of the board of estimate and apportionment, that the title and compensation for such vacant positions conform to the standard title, work specifications and compensation grades fixed by the board of estimate and apportionment."

2. "That no modification of any schedule supporting an appropriation for salaries . . . shall be made except when authorized by resolution of the board of estimate and apportion-

ment in conformity with standard titles, work specifications and compensation grades which may be or have been approved by said board."

In November, 1914, the director of the bureau of standards rendered his first report to the committee on salaries and grades, containing in detail a plan for the classification and standardization of employments in the city of New York. This report urged the need of prompt action on the part of the board of estimate. No action was taken by the board on this report. In March, 1915, the director of the bureau of standards submitted another report, urging consideration by the board of estimate of the specifications prepared and in process of preparation by the bureau of standards, and requesting the board to appropriate sufficient money for printing the specifications at a cost not exceeding \$2,000. Several months passed without action on the part of the board of estimate, causing much valuable time to be lost. It was not until July, 1915 that the printing of the professional service was formally approved. During the summer considerable progress was made in completing and publishing specifications, but after the first of September work on the budget began and continued until the first of November.

During the preceding year a definite work program had been adopted and carried out. This had involved:

The adoption of a proper classification of services and groups.

The gathering of field information regarding each group of employees.

The preparation of standard specifications based on this information.

The holding of conferences with representatives of the departments and employees concerned for the purpose of improving and revising specifications.

The gathering of information regarding salaries paid for and conditions relating to similar service in private employment.

The carrying on of a voluminous correspondence with department heads and other superior officers regarding the principles of standardization and their specific application in the various services, groups and grades.

The collection and preparation of data supporting the standard specifications, including a report on a minimum wage for unskilled laborers, to accompany the specifications for the street cleaning service, a report on the hospital helper situation and its remedy to accompany the specifications for the institutional service, etc.

The preparation of reports to the committee on salaries and grades on the filling of vacancies in all positions in the city service, in accordance with the tentative standard specifications. The revision of personal service cards and charts in all departments, the making of final appraisals of positions, and the preparation of memoranda and material on the proper working units of employees in the various departments to be used in the preparation of the 1916 budget.

It was decided to divide all employments into the following services:

Executive, legislative, judicial, professional, sub-professional, educational, investigational, inspectional, clerical, custodial, street cleaning, fire, police, institutional, skilled trades and labor.

The reasons for such a division readily suggest themselves. These are not the only possible divisions, but they seemed to be those which were best suited to the needs of New York City. It will be seen that although the theory of standardization is that the divisions are along functional rather than departmental lines, it was not possible to maintain this distinction in all cases.

The executive service was set up to include only the executive heads of departments, in all cases elective or appointive officers. It was, however, specifically provided that the secretaries of departments who are at present exempt officers should in future be classified as competitive in order to provide for a high permanent official in each department, who should not be affected by a change in administration, whose duties should not be policy-determining, but administrative and interpretative, who should be able to coordinate the various activities of the bureaus of the department and to inform the new commissioner and his deputies on all details of departmental administration.

The legislative service was to include the board of aldermen,

and the judicial service, the judges. Up to the present time no recommendation as to salary has been made for these services. They were included more for the purpose of providing a complete classification of all employees than with any immediate purpose or prospect of changing the present salaries. They may be completed at any time in future.

The professional service was set up to include only members of the recognized professions with the intention that such high qualifications of professional training and experience should be established as to clearly differentiate this service from the sub-professional service. The sub-professional service was to include assistants of the professions, such as draftsman, laboratory assistants, law clerks, etc., who should have an opportunity to graduate into the professional ranks but should not be classified or paid on a professional basis.

The educational service at the present time includes industrial instructors, recreation instructors and other miscellaneous instructors. The main body of teachers is at present under the control of the board of education and their salaries are fixed by law. At some time in the future it may be thought advisable to bring the salaries of these teachers under the control of the board of estimate.

The investigational service was planned to include the higher type of examiners and investigators in central staff agencies, and in public charitable and social work.

The inspectional service was created to include health, trade, building, public works, safety and other inspections involving a kind of observation and inquiry more routine and stereotyped than that included in the investigational service.

The reasons for creating the clerical service are obvious. The word "clerical" is a very comprehensive term and under it may be included all kinds of office work not requiring particular training and skill of the kinds set forth in the other services.

The custodial service was created to provide for work closely related to laboring work but of a character involving the custody of public property, such as the work of caretakers, janitors, watchmen, storekeepers, bridgetenders, animal keepers, etc.

The reasons for creating a street cleaning, police and fire service are self-explanatory. These are the large specialized uniformed forces of the city. It is true that the rank and file of the street cleaning department are very close to laborers and that the police are close to inspectors, investigators and watchmen, but these forces have peculiar identities and duties of their own and no purpose could be served by classifying them otherwise than separately and individually.

The institutional service is another service which is not entirely functional and does not include all employees in the city performing a certain kind of work. It includes in general all employees in institutions other than professional workers, from helpers and artisans up to and including lay administrators. The institutional problem is a peculiar and difficult one. A helper in an institution who receives maintenance may be doing work very similar to that of a laborer or skilled laborer in other departments, but the conditions of employment and salary are so different from those of employees in other departments as to constitute for purposes of classification a separate and distinct kind of employment.

The skilled trades service includes the recognized skilled trades—mostly unionized trades—and, in addition, a few classes of employees, such as fire telegraph despatchers and employees on city boats, who have been placed in this service because the work is more accurately classified in this service than in any other. There is a great advantage in keeping the skilled trades, particularly the unionized trades, together, since the problem of determining prevailing rates or of setting up annual salaries for these employees should be dealt with as a whole.

The labor service includes laborers, skilled laborers and miscellaneous supervisors of laborers not included in the skilled trades service or the custodial service—in general, employments requiring manual strength or the ability to supervise manual workers rather than any particular skill along specialized lines.

These services were sub-divided into groups and the groups sub-divided into grades, distinguishing the specific work to be performed by individual employees and an appropriate range of

salary, the difference between grades being based upon discernible facts as to the importance, difficulty, responsibility and value of the work.

Provision was originally made to include a managerial service taking into consideration officials other than the supreme executives, such as superintendents of bureaus of buildings, offices, ferries, docks, parks, the chief of the fire prevention bureau, etc., with the idea that these positions, although associated with particular groups in other services, for example heads of the bureaus of buildings with the inspectors of buildings in the inspectional service, the chief of the fire prevention bureau with the inspectors of fire prevention, the heads of the bureaus of public buildings and offices with the caretakers and janitors of these buildings, would not and should not be in the line of promotion in these other services, and that they constituted positions for which general administrative ability and experience constitute the primary qualifications, rather than experience in any particular specialized lines. However, after considerable discussion it was decided to abandon this service because it was found impossible to limit the number of positions included and because it complicated the classification, in that it separated certain administrative positions at the head of groups of employees from these groups of employees. It was also found that a considerable number of these administrative positions really required a long service in specialized lines rather than general administrative ability and experience. Moreover, in fixing salaries for these positions they could not be considered as isolated administrative positions but had to be considered in relation to the groups of employees under supervision. It was therefore finally decided to place these positions at the head of the groups with which they were most closely associated. For example, the caretaker group in the custodial service includes positions all the way from that of attendant in a bath to that of superintendent of public buildings and offices, even though a superintendent of public buildings and offices may be an executive officer appointed not because he has had experience as a caretaker and janitor, but because in the opinion of the app

ing officer he has sufficient administrative ability and experience to put him in charge of the maintenance of public buildings.

In general, it was the practice of the bureau of standards to base its specifications for each group upon a field report made by examiners who had studied the organizations in which the work outlined in this group was performed, the duties of employees, etc.

In fixing the rates of compensation in each grade the bureau of standards based its recommendations upon the following principles:

1. That a range of salary should be paid in each grade beginning somewhat lower than the average rate being paid by liberal private employers and other government agencies and proceeding by gradual increases extending over several years to a maximum rate about 10 per cent higher than this liberal average paid by other employers. It was found that it would be impossible to base salary ranges only upon salaries prevailing in other employments since there were found to be positions in the city service for which there was no parallel in private employment and since in the case of other positions, it was found that there were conditions peculiar to the New York City service, as well as conditions inherent in all government services, which made it necessary to interpret figures obtained from private employers and other government agencies in the light of New York City needs and common sense.

2. That New York City wished as far as it was financially able to be a model employer. Following this principle, the bureau of standards made an exhaustive study of a minimum wage for an unskilled laborer's family. The conclusion reached in this study was that a family consisting of an unskilled laborer, his wife and three children could not at the period of maximum family expense and demand live decently on less than \$840 per year. It was therefore decided to increase the maximum compensation for street cleaners and other unskilled laborers to at least \$840 on the theory that a laborer should be willing to enter the city service at a low salary while he is still young, and has few family responsibilities, on the understanding that he would receive increases in salary up to the maximum which should be

sufficient to take care of him and his family at the time of maximum responsibilities.

In making temporary adjustments to the new scale proposed for the rank and file in the street cleaning department, about \$150,000 was spent in the last two budgets. This is interesting because it shows clearly how large a sum is involved in making some adjustments in salary affecting a large number of employees. An increase of \$24 a year looks very picayune until multiplied by 3000 employees. The existence of small armies of slightly underpaid employees should never be lost sight of in making preliminary estimates of savings through standardization. As a matter of fact, in the majority of large cities, it is safe to say that savings can be made through standardization only by ultimately abolishing large numbers of unnecessary positions and not merely by unpaid and downward adjustments to standard grades, however drastic. It is generally found that for every single employee, clerk or stenographer, who is drawing a \$3,000 salary for \$1200 work, there are ten sweepers or cleaners who are \$60 below grade.

The specifications initially drawn up by the bureau of standards for each group in accordance with the principles outlined above were in almost all cases submitted for criticism at conferences attended by administrative officers, employees and experts from private employment. Numerous modifications were made as a result of these conferences. Since there are about 150 groups in all, and it is difficult to hold more than two such conferences a week and at the same time keep the field work running smoothly and correspondence up to date, it is apparent that there must be some limit to public discussion. The specifications as amended after conferences were published in a first edition and were used in making up the 1916 budget.

The history of the making of this budget is interesting. The city was face to face with a large and unexpected state tax of some \$14,000,000. The fusion administration was confronted with the seeming necessity of cutting the non-mandatory part of the budget to the lowest possible total, in spite of the legitimate demands of department heads for increased service. The

preliminary estimates indicated large increases. It was suggested that necessary savings could be made only by standardizing salaries, that is, by fixing salaries of employees in accordance with standard grades and by eliminating unnecessary positions. The mayor and comptroller declared for a drastic policy of cutting salaries and eliminating unnecessary positions. The borough presidents were opposed but offered no alternative. The president of the board of aldermen did not at this time go on record. The budget sub-committee proceeded to pass upon the first budgets which came before it on the theory that drastic adjustments to standard grades were to be made, or, as the phrase went, that they were "to cut to the bone." Considerable opposition developed not only among civil service employees but also on the part of newspapers and the public. Numerous appeals were made to the main committee of the board. The pressure for a more equitable and humane system of standardization became so great that it was resolved in a final revision of the estimates to adopt a more liberal policy, but instead of a definite plan for cutting salaries it was practically decided to take up each individual case on its merits. The result was that every argument known to public service was brought to bear to save individuals from being reduced in salary. In general, there was almost no criticism of the specifications on which the appraisals were based. There was considerable criticism of individual appraisals in one grade or another, but in the main it was felt that the appraisals were just. The position of the bureau of standards and the bureau of contract supervision, an engineering bureau of the board of estimate which assisted in the budget analysis, was anomalous.

The members of the board of estimate were not unanimously behind the salary standardization program at all. So far as could be judged, the borough presidents were opposed to all standardization downward and apparently very little in favor of any kind of standardization, nor did the other members of the board stand together in the formulation of any definite policy. The examiners who worked on the budget were therefore in the unpleasant position of making all the recommendations for cuts,

of having no definite policy to pursue and no united board of estimate to back them up. Opposition from heads of departments where budgets were being cut was of course to be expected. It must also be remembered that the board of estimate in the making of the budget is a judicial body which must decide on their merits, differences of opinion between examiners and department heads, but it would not have been unreasonable to suppose that a fusion board of estimate definitely committed to a program of standardization could unite on a policy of standardization which could be applied almost mechanically in all cases. However, the result of the budget conferences was that substantial adjustments were made in salaries of employes; that the reductions were considerably modified through the application of a more humane principle of cutting and in a few cases through pressure or influence. A very large number of employees, particularly in the lower grades, such as sweepers and cleaners, received increases. The work on the budget showed plainly that the number of employees favorably affected was larger than the number adversely affected by salary standardization. The great savings lay in reduction in numbers of superfluous employees.

When the budget reached the board of aldermen all increases in salary above \$2500 were vetoed by that board and several new and necessary positions were also vetoed. An attempt was also made to abolish the bureau of standards but this was defeated by a very narrow margin. The mayor, however, vetoed the cuts of the board of aldermen and the board failed to pass its cuts over the mayor's veto. The 1916 budget therefore represents a very substantial application of the salary specifications. Much confusion, however, has resulted owing to the fact that titles in the new specifications were placed in the budget which did not correspond to the titles at present in the civil service classification. In order to avoid further confusion it is necessary that the civil service commission adopt the titles, grades, definitions of duties, qualifications and conditions governing promotion in the new standard specifications at the earliest possible moment.

It will be remembered that the civil service commission was

represented on the original sub-committee on standardization in 1912. Since that time the civil service commission has been represented at numerous conferences and it is due to lack of complete understanding as to the coöperation necessary between the civil service commission and the bureau of standards that it is now necessary to hold further conferences in order to settle differences of opinion. When the civil service commission has agreed to the titles, grades, definitions of duties, qualifications and conditions governing promotion in the new standard specifications, the consent of the mayor and the state civil service commission has been obtained, and the new classification has been adopted, it will remain to give to each employee his new standard title and grade. This adjustment of titles and grades is now being studied. It involves technical and legal questions which cannot be settled in a day. It is almost certain to involve some action by the board of aldermen and may require an enabling act of the state legislature. It is possible that the ultimate application of the new titles and grades of all employees must wait until the 1917 budget is adopted.

In the meantime, the civil service commission has published and is installing a new system of efficiency or service records for all employees based upon a comprehensive report submitted by the bureau of municipal research, with the intention that these records shall form the basis under the standard specifications for all regular increases in salary within grades. The new plan merely prescribes the skeleton of the service record system and the form and method of computation and final records. It is contemplated that existing accounting or administrative records will be coördinated with the final service records or that other supporting records will be developed. It must be admitted that in the case of a very large number of employees service ratings must be based largely upon the judgment of superiors and not upon reviewable facts. It is however possible to impress rating officers with the importance and the judicial nature of their work and to organize a division in the civil service commission which will be constantly in touch with the various departments and will check and review all records. If this plan is realized, it will be

possible definitely to promise employees, especially in the lower grades, regular annual or other increases in salary provided they attain a certain mark on their service records.

It is evident from the foregoing that a large part of the work for which the bureau of standards was created is almost completed. It is therefore pertinent to review the past work and discuss the future of the bureau of standards.

During the last year the functions of the bureau of standards have been as follows:

1. To prepare standard supply specification and to assist in the preparation of the supply items of the 1916 budget.
2. To prepare standard salary and grade specifications.
3. To report to the board of estimate upon the filling of current vacancies.
4. To examine and make recommendations affecting personal service in the 1916 budget.
5. To prepare charts for budget and administrative use, indicating the present and proper organization of city departments.

The work under the first function is almost complete and what remains of this function has been transferred to another bureau to take effect on January 1, 1916.

The second function has been discussed at length above. A second and revised edition of the standard specifications including the suggestions made by the civil service commission is about to be published for the board of estimates and apportionment. Presumably this will be a final edition although that board has steadily refused to commit itself to any final approval.

The third, fourth and fifth functions, involving the current and budgetary application of salary and grade specifications and the study of the present and proper organization of departments must necessarily be carried on by some central agency. This agency might be in the finance department under the comptroller, in the office of the commissioners of accounts under the mayor, it might be a bureau under the board of estimate or it might be a bureau under the civil service commission. There are objections to every one of these plans. If the mayor and presidents of the boroughs object to having this agency in the finance

department, the control of the filling of current vacancies and the examination of the budget were originally functions of the finance department, and there would be objection to transferring them back. The commissioners of accounts in this relation would act only for the mayor's departments in their investigational work. It is extremely doubtful whether it would be wise to add to the present judicial functions of the civil service commission the duty of making organization studies and criticising the budget. There is also little logic in the present organization of the bureau of standards and other bureaus under the board of estimates. A number of members of the board of estimate do not favor the retention of the bureau of standards as at present constituted and are definitely opposed to any extension of its functions. With the work for which it was originally established almost complete, the bureau of standards is face to face with the need of a definite program supported by the board of estimates. It must either find a function or become ridiculous.

There is a class of employees in a number of cities, where an executive budget procedure has been established, who are known as budget men. They are men who work night and day three months in the year in the preparation, review and criticism of budgets. At the end of these three months they take a vacation which lasts nine months, or, in other words, until it is necessary to begin work on the next budget. Unless the bureau of standards is given the function of studying the proper organization of departments, of bringing about adjustments and reducing the number of employees, it will become an agency paid on an annual basis for three months' work.

Unfortunately there is no time remaining to discuss standardization work in other cities and states. There is a very interesting standardization study of New York state employees going on in Albany at the present time under the direction of the senate committee on civil service, in which the bureau of municipal research is also coöperating. Certain deductions can, however, be made from all these standardization studies which may be of use to other cities and states which contemplate making similar studies:

1. When a program for standardization work is first made, great care should be taken in determining what executive or other agency is to be responsible for the work. An effort should be made to get the persons who are to be responsible to pledge themselves to stand squarely behind the program. Without executive support field data cannot be collected, definite conclusions cannot be reached, and endless recriminations delay the work.

There is no other large program involving simplification and improvement in government which calls for more courage and integrity on the part of responsible executives than a salary standardization program. Even though many classes of employees are favorably affected and all future employees will benefit from the program, there is bound to be a great deal of ignorance and opposition to overcome and the opportunities for favoritism, especially in appraising the work of individuals and in the application of new standards are numberless.

2. In selecting examiners and investigators, it is well to avoid introducing in the standardizing agency the same conditions as regards character and conduct of personnel which this agency aims to abolish in other departments. A standardization agency should be a model agency in the plan and conduct of its work. Nothing can make salary standardization more ridiculous than to put it into the hands of lazy or incompetent examiners. There is a peculiar kind of critical mind which is of particular value in making such studies. An examiner who is not vitally interested in his work is of no value; an examiner who has too many close friends in city departments and who is susceptible to their influence is of no value; an examiner who in collecting information, preparing specifications or making appraisals always wishes to take the "human factor" into consideration is a dangerous man to associate with such work. The consideration of the "human factor" is entirely a matter of policy for policy determining bodies in applying salary and grade specifications. The examiners who prepare these specifications should prepare them on the theory that they are to fit a new generation of employees. It is no business of theirs to make adjustments to present condi-

tions in preparing schedules which are to be applied to future employees.

3. It is necessary to establish a close coöperation with the civil service commission if the standardization work is not done in the civil service commission itself.

4. It is essential to have a more or less definite understanding as to the time and money to be spent on standardization work. Salary standardization is at best a long and tedious process, if it is to be done well, but there is a difference between time and eternity.

I believe that the final results of the work in New York City will be regarded as entirely satisfactory but it is well to remember that this work commenced in 1912 and that about \$400,000 has been spent in bringing about the desired results. It is futile to attempt to establish beyond doubt who of the many agencies involved in salary standardization work is responsible for delays and set backs.

5. When salary and grade specifications have been prepared and the question arises as to their application either in a budget or for current use, experience indicates that drastic adjustments upward and downward arouse every form of political and personal opposition known in government and are likely to wreck a whole program. A very powerful executive willing to risk his political future, or an executive face to face with the universal demand for a reduced budget can succeed in making a drastic and complete standardization of all salaries. Something like this was done in Pittsburgh. It is, however, a very unsafe procedure and there are many sound arguments other than those of political expediency against it. Employees who have served for years in an unstandardized civil service and who have formed certain habits of life in accordance with their salaries, are at least entitled to some consideration in adjusting their salaries to new and unexpected standards.

6. If it is decided not to make complete and drastic adjustments and, on the other hand, not merely to wait to apply the specifications to new-comers in the service, it is essential to have a definite and almost a mechanical program of adjustments in

order to avoid personal and political pressure and charges of favoritism. A plan such as that carried out in New York City in the preparation of the 1916 budget, involving no definite principle, excepting that of reasonable treatment of individuals, is almost worse in its effect upon employees than a drastic program which does not take individuals into consideration at all. The moment an executive body listens to every plea for an individual, the public, and particularly city employees, refuse to believe that any principle has governed the final decisions, as, in the case of New York City, when a number of restorations were made in salaries, which could not be explained satisfactorily, every employee made up his mind that there was influence behind it and that standardization was like other great reform principles—a very accurate and mathematical thing on paper but a totally different thing in its application to individuals.

7. When standardization has been put into effect and incorporated into budget and financial procedures and civil service rules and regulations, definite provision must be made for keeping it up to date and for natural expansion and change along logical lines. Unless this is done the titles, grades and salaries of employees will soon degenerate into the same chaotic state which existed before standardization.

STANDARDIZATION AND INSPECTION¹

J. A. DUNAWAY

University of Pennsylvania

In the ten minutes I have, I want to apply some of the principles of standardization to the inspection service of the city. Now of course in ten minutes I could not even outline the extent and importance of the inspection work of a city the size of Philadelphia. But that it is important and becomes more so with each extension of the city's activity, is too well known to need repetition. In the first place I want to give some of the results of one very significant attempt at the introduction of standards in the inspection service. This was made by the registrar, in the bureau of water in Philadelphia. What he tried to do was to find the best method of procedure and have it followed, and to keep such records that a standard day's work could be determined.

The forty-five inspectors in this division count water fixtures, read meters, and inspect for the waste of water in dwellings. This data is used for the basis of water rent charges. Formerly each inspector was given a certain number of political wards and turned loose to collect his data as he saw fit. He made out his own route. There was no outside supervision, and no one knew for sure how many hours a day a man worked, or indeed whether or not he worked at all. It didn't take a man long to compile a book with all the dwellings in his district listed and all the fixtures counted and entered therein. Now water fixtures in a house are fairly constant in number. Changes generally consist in additions. No consumer kicks because of an under-charge, so an inspector could write up his report from the door-step, the corner

¹ An address before the American Political Science Association at its annual meeting in Washington, D. C., December 29, 1915.

saloon, or even his own home, and no one would know the difference. The introduction of meters made some complications, but even then it was not difficult to compute this quarter's bill on the basis of last quarter's reading, and it was fairly safe, provided the computation was low enough.

All this has been changed. The inspector is supervised, his work is planned for him. He is given a master route which he must follow. He has typewritten instructions as to his duties at each address, with blank spaces left for the questions he must answer on the basis of his inspection. When these instructions are followed and the blanks filled out, they constitute a report on each house. He must also make a complete daily report, showing where on his route he began, where he quit, the number of inspections, the number of no responses, the number of notices served, etc. A chief inspector acts as a free lance, not as a spy, but to check up the accuracy of the work. Carefully kept records make it easy in this way to determine what is a standard day's work, and how far above or below the standard each man falls. The number of mistakes each man makes can also be determined. This complete record is kept up to date and posted monthly. In short, the good work can be sorted from the bad, but at present it cannot be rewarded. All inspectors receive the same salary, and there is no standard provision for promotion. An inspector receives as much salary the day he begins working for the city as the day he dies of old age. In fact the registrar found that six of his forty-five inspectors were so old and decrepit, they could not assume any new duties or learn a new method of work, nor were they able to do a standard day's work. But there is no provision for pensioning these men. They must remain inspectors though they lower the tone and efficiency of the whole division.

To my mind this attempt at the introduction of standards is far more important and significant than the actual results already obtained. It is a forecast for the future. In spite of the handicaps, however, the results have been all that could be hoped for. The quality of work has been vastly improved. There is an incentive to the men to do good work, even if it is

nothing more than beating the record. And the quantity of the work has likewise increased. In 1911, about 62,000 inspections were made, while in 1912, 292,000 were made by the same force, and the water rent on the same properties was increased by over \$150,000. In short, the standard of efficiency has been steadily raised.

One of the most fertile fields for standardization is in the handling of complaints. Now the way a complaint is handled means more to the individual citizen than almost any other phase of municipal administration. You might steal the city hall or save the city ten million dollars and the ordinary citizen would not get unduly excited about it. But he is tremendously concerned about the way a matter he has complained of is handled—and in far too many instances, these matters are handled very badly. I have in mind the almost everlasting reference of complaints from one bureau or department to another—while the complainant waits. True there are reasons, principally the lack of uniformity of the laws and ordinances which have placed so many things under conflicting jurisdictions and commanded bureaus and departments to do things without giving them the necessary power. Thus a bureau operating under a fixed (and inadequate) appropriation shoves every possible matter into this twilight zone over which no one has authority. When a crisis comes or something happens, the bureau saves its face by pointing to its record. “This matter was referred on such and such a date to such and such a bureau for its attention.” Director Cooke in the course of the multitude of improvements which he has instituted in Philadelphia, long ago realized this problem of the foot-balling of matters from bureau to bureau but unfortunately his term of office was too short, and the handicaps too great to do every thing which needed to be done. I have in mind an illustration which came to light in a study I undertook at his suggestion. It is the story of two bricks which on the fifth of June were taken from the private alley-way of an Irish widow and used to finish repaving around a fire plug. The widow was frankly angry. She called up city hall the same day and threatened to sue the city. She got little satisfaction out of that, so she wrote a letter imme-

diately to the bureau of water. The chief of this bureau received the letter, sent it to the proper water district, and wrote the widow promising a prompt investigation. The Purveyor of this district made a personal investigation and found the widow had stated the facts correctly. Her bricks had been pried up, and were now reposing by the fire plug. But did he replace the bricks? No indeed, though there were 40,000 belonging to the city in his back yard. He looked up his record and found that *his* workmen had not done the job in question, so the water bureau could not be at fault. He made this report to his chief, who again wrote to the widow and promised to refer the matter to the bureau of highways for its attention. On June 19, the reference came to a division engineer in the highway bureau, who sent it to the proper highway district (which has an office in the same building with the purveyor of water, who had originally looked into the complaint). On June 23, a district inspector of the highways bureau reviewed the scene, but did not replace the bricks. He saw the damage and so reported. His superior looked up the records and found a certain contractor responsible for the job of repaving, and notified the contractor to replace the bricks. I went with the inspector to view the scene on July 12—his third visit, five weeks after the complaint had been made, and the two moss covered bricks were still reposing by the fire plug, while the alley-way of the widow showed a corresponding vacancy. The subsequent history of this affair I do not know. But it is not an exaggerated or isolated instance. The same procedure is gone through with thousands of times each year, only most complaints are more serious, and many, concerning buildings, sewers, water, streets, etc., wend their way through four or five bureaus instead of two. A booklet classifying complaints, showing to what bureau each should be addressed has helped steer many in the right channel. But unfortunately, it has not stopped many unnecessary references.

It seems to me that before we can even approximate efficiency in city administration, there must be the widest possible extension of the application of standards. Then good work can be recognized. Good work must be rewarded by promotion—promotion

based on merit. The laws and ordinances must be revised to eliminate this "twilight zone." It must no longer serve as an excuse for the non-performance of duty. Under the present arrangements not even the proverbial Philadelphia lawyer can tell just who is to blame. The individual citizen certainly is helpless. I do not wonder he views with alarm every extension of the city's activity when he must wait six weeks for the answer to a simple complaint while it is being shifted from one bureau to another, finally ending in that "no man's land," over which no one has authority. One possible way out of the difficulty would be a central bureau of complaints and inspection to receive and investigate all complaints, serve the proper notice on the property owner, or notify the proper city department of the action needed, as the facts might warrant. This would save the city's money—spent today in double and triple inspection. But better still, it would fix responsibility—which makes for efficiency. And it would enable the citizen to see "the wheels go round," and so make it worth his while to take an interest in the city's business.

LEGISLATIVE NOTES AND REVIEWS

JOHN A. LAPP

Director of the Bureau of Legislative Reference of Indiana

The Initiative and Referendum in 1915. From the statutes enacted by the legislatures of California, Washington, Ohio, Nevada and Nebraska in session in 1915 and the amendments proposed during the year to be voted on in 1916 in Minnesota, Arizona, and Arkansas it appears that the initiative and referendum were quite extensively acted upon during the year. Considerable legislation on this subject was proposed in many other States which conservative or reactionary legislatures killed. The year's legislation added no new States to the list already having the initiative and referendum except Maryland where the referendum was adopted by the voters of the State at the general election. An interesting resolution was passed by the Montana legislature providing for investigation by a committee with the purpose of suggesting improvements to the initiative measures already in operation in the State,

Fifteen state legislatures held a session in 1916 and the initiative and referendum were given more or less attention in ten of these, namely, New York, Massachusetts, Illinois, New Jersey, Virginia, Maryland, Kentucky, Rhode Island, South Carolina and Mississippi. All the sessions are not over at the time this article is written but it is extremely doubtful that any of these States will take such a step this year. Nevertheless all over the country more attention is being drawn to this method of enacting and rejecting legislation by the electors.

A brief review of the amendments voted on at the election and the laws passed in 1915 affecting the working of the initiative and referendum machinery in the various States follows.

Maryland. The 1914 legislature of Maryland provided for an act to amend the constitution by giving the voters of the State the referendum, provided they voted to adopt the amendment at the 1915 election. This amendment was adopted by a vote of 2 to 1 at the polls. In the form passed the referendum can be invoked on any act passed by the general assembly on a petition signed by 10,000 voters of the

State. Any public local law for any county or the city of Baltimore can be referred upon referendum petition of 10 per cent of the qualified voters of the county or city. No law except an emergency law—with due restrictions as to what may be considered an emergency law—goes into effect until the first day of June following the session at which it was passed. In the meantime petitions to refer the vote may be filed. An emergency law remains in force notwithstanding such petition but is repealed 30 days after a majority of the voters reject it. If a number of signatures to any referendum petition equal to more than one-half of the required number be filed by the first day of June, the time for the law to take effect and for obtaining the remainder of the signatures is extended to June 30. No law or constitutional amendment licensing, regulating, prohibiting or submitting to local option the manufacture or sale of malt or spirituous liquors shall be referred or repealed under this act.

Minnesota. The people of Minnesota are apparently determined to have the initiative and referendum in their constitution. At the general election in 1914 such an amendment was favored at the polls by a 4 to 1 majority of those voting on the question but the Minnesota constitution requires that such an amendment must have a majority of the votes for candidates so the proposal was defeated. In other words an elector not voting for an amendment in Minnesota is counted as voting against it. An act providing for the initiative and referendum as an additional means to secure and control legislation and as an additional means by which the people may amend the constitution will be on the ballot again next November. Under this a constitutional initiative signed by 2 per cent of the electors of the State may be presented to the legislature. If the legislature does not submit the amendment to the electors at the next election or submits it in a different form, then a further petition signed by 8 per cent of the electors of the State will secure its submission to the voters at the next election. A provision is made whereby the amendment shall become a part of the constitution if approved by a majority of the electors voting at such election or by four-sevenths of the electors voting on the amendment; provided, not less than three-sevenths of the voters voting at the election voted for the proposed amendment. A statutory initiative signed by 2 per cent of the electors of the State may be presented to the legislature. If the legislature does not pass the proposed law a further petition signed by 6 per cent of the electors of the State is sufficient to submit the proposed law at the next election and it becomes a law if ap-

proved by a majority of the electors voting thereon providing the vote in favor of the proposed law is not less than 33 per cent of the total number of votes cast at the election.

A referendum can be had on any law if the petition is signed by 6 per cent of the electors of the State. The law is repealed if a majority of the electors vote for its repeal provided the number is not less than 33 per cent of the total number of votes cast at such election. Fifteen per cent of the electors may suspend a law ending the referendum vote.

The provision as to distribution of signers requires that not less than one-half of the necessary percentage of voters shall be obtained in not less than one-fourth of the counties of the State. Voters who have signed the first petition are also qualified to sign the second petition. The percentage in any case is based upon the total number of votes cast for governor at the next preceding election.

Arkansas. Arkansas adopted the initiative and referendum in 1910 and it seems probable now that a substitute initiative and referendum measure will be submitted to the voters at the general election in 1916, as more than enough signatures have been filed with the secretary of state for the proposed substitute. At present the number of constitutional amendments that may be proposed by the legislature and submitted to the voters of the State in any year is limited to three. The present initiative and referendum measure is quite sure to be placed on the ballot next fall as it was filed third on the waiting list and it also will provide if it is approved for the removal of any restriction as to the number of initiative and referendum measures that may be voted on in any year.

The proposed constitutional or statutory initiative petitions require 10,000 legal voters as signers and the petition must be filed four months before an election. Referendum petitions must have 7000 voters as signers and must be filed within 90 days after the legislature adjourns. Emergency measures passed by a three-fourths vote of the legislature except franchises or special privilege measures go into effect at once but all other measures are suspended until the result of the election is obtained. Signers of petitions do not have to be distributed in each county of the state.

The initiative and referendum also applies to cities and counties where 10 per cent of the voters must sign the initiative and 15 per cent the referendum petitions. The proposed amendment provides that a majority of the votes cast for candidates shall not be required to pass an initiative and referendum measure. It takes a three-fourths vote of

all members of a legislative body to repeal or amend a measure approved by popular vote, and a unanimous decision of the supreme court to declare the measure unconstitutional. Compensation may be given for circulating petitions. It is left to the legislature to provide punishment for fraudulent practices in connection with the operation of the initiative and referendum measure.

Arizona. The Arizona legislature took a reactionary step at its 1915 session when provision was made for an amendment to be submitted to the voters at the general election in 1916 requiring that initiative and referendum measures to be adopted must receive a majority of the total vote of electors voting at an election instead of a majority of the votes cast on the measure itself.

Nevada. Qualified electors of each county in Nevada obtained from the 1915 legislature power to demand a referendum on any law passed by the legislature which pertains only to their county provided that 10 per cent of the voters of the county petition it. A petition of 40 per cent of the voters of the county calls for a special election. A referendum election on charter amendments upon petition of 10 per cent of the qualified voters of the city is provided for in the act giving cities the commission form of government.

Nebraska. A law was passed by the 1915 Nebraska legislature relating to the initiative and referendum in municipalities by providing that not more than one initiative and referendum proposal upon the same question shall be submitted in any year and also providing that ordinances adopted shall go into effect immediately. This act does not become effective in any city until the voters accept it.

Ohio. The 1915 Ohio legislature passed a law making any person who is convicted of fraud, deception or bribery in signing or circulating initiative or referendum petitions subject to a fine of from \$100 to \$500.

Another act was passed relative to the sufficiency of signatures to initiative and referendum petitions. The board of deputy state supervisors of elections of each county containing a city where registration of voters is required must keep the petitions open to public inspection and must carefully compare the names of the signers with the registration list to ascertain that every signer is qualified. The sufficiency of any doubted signature is settled by the court of common pleas of each county. The sufficiency of all signatures is assumed unless they are proved otherwise at least forty days before the election in which case ten additional days may be allowed for filing additional signatures to the petition. The board must return the parts of the petition to the

secretary of state certifying the signatures within 25 days after receiving it from him and not less than 50 days before the election.

Another act provides for an honest election on questions submitted to a state referendum vote. Any qualified elector may demand a recount of ballots on state referendum questions within 15 days after the result of the election has been announced, by filing a petition stating his reasons for the request in the common pleas court of Franklin County. The chief justice of the supreme court names a judge to hear the case. If a recounting of the ballots is necessary two master commissioners may be appointed by the court to help make the recount. Both sides may be present or represented. The court disposes of disputed and uncounted ballots. If the recount differs from the first count the court shall enter a finding stating whether the error was willful or a mistake. If it is found to be due to gross negligence or willfulness on the part of election officials after duly giving them a hearing the court shall adjudge the costs of the recount against such officials and may impose an additional fine of not more than \$500 which fine goes into the common school fund. A fine of from \$500 to \$1000 and imprisonment from 6 months to 1 year may be meted out to anyone who tampers with or changes the ballots. Similar provision is made for contests in referendum questions in counties, municipalities, or townships as to procedure and penalty.

A constitutional amendment affecting the workings of the initiative and referendum machinery in Ohio was submitted to the voters at the general election in 1915, and was defeated. This so-called "Stability Amendment" which the electors of the State of Ohio turned down at the polls provided that no amendment to the state constitution which has twice been rejected since the adoption of the new constitution in 1912 shall again be presented to the voters unless 6 years shall have elapsed since the last rejection. The Ohio Stability League said to be backed by the brewing interests and opponents of the initiative and referendum, circulated the initiative petition proposing this change in the state constitution asserting its purpose to be to prevent the abuse of the initiative. It may be of more than passing significance that in both 1914 and 1915 a prohibition amendment had been defeated in Ohio. The labor unions, direct legislation advocates and the anti-saloon league opposed the measure. Supporters of the measure argued that three possible votes within a period of seven years on the same proposition and thereafter one vote every six years should be enough to carry any measure that the people want.

Washington. The 1915 Washington legislature controlled by a group of reactionaries passed a law to which they gave the rather misleading title, "To Facilitate the Operation of the Initiative and Referendum." Governor Lister vetoed the bill but it was again passed by the legislature over his veto. The law provides that voters both in city and country districts must sign initiative and referendum petitions in registration offices before a registration officer. It is made a gross misdemeanor for anyone to attempt to induce any person to sign a petition within 100 feet of the entrance to a registration office. The attorney general if requested to is required to advise proponents of an initiative measure as to its form and phraseology. The exact forms for petitions to the legislature, petitions proposing measures for popular vote and referendum petitions were fixed by the legislature and all initiative measures must be filed within 10 months prior to the election or session of the legislature at which they are to be submitted. The secretary of state canvasses the petitions in the presence of at least one proponent and one opponent of the proposed measure, if they so desire, and sends a certified copy of the petition to the legislature. The law makes it a felony and provides punishment for illegal signers, false names, false statements and bribery in connection with these petitions. Any citizen if dissatisfied with the rulings of the secretary of state that the petition does not contain the required number of legal voters or has fraudulent names may get an injunction and take the case to Thurston superior court, the court to examine the petition and the supreme court may review the decision of the superior court.

California. In the progressive State of California Governor Johnson in his annual message to the 1915 legislature called attention to some abuses and irregularities of the initiative and referendum and recommended that the law be amended to make these abuses impossible. The legislature acted upon his suggestions by setting forth the qualifications of an elector who signs a petition and made it a felony to sign false names punishable by from one to fourteen years imprisonment. Misrepresentation or fraud in securing signers to initiative and referendum petitions are punishable by imprisonment for not more than two years or by a fine of not more than \$5000 or by both. Provision was also made for mailing pamphlets containing the proposed measures to every voter fifteen days before an election. Initiated measures in future are to be submitted to the attorney general who shall prepare a title and summary for the measure. The legislative Counsel Bureau when asked in writing by 25 or more proponents of an initiative meas-

ure shall coöperate in the preparation of such law if he thinks it a reasonable measure.

The Act of 1912 providing direct legislation for cities and towns by means of the initiative and referendum was quite extensively amended. If 15 per cent of the electors of any city or town sign a petition containing a request that such ordinance be submitted to the vote of the people at a special election and present it to the legislative body of their city or town, the legislative body must either pass the ordinance without alteration within ten days after it is presented or call a special election at which the ordinance shall be submitted to popular vote. If only 10 per cent of the electors sign the petition, and the ordinance petitioned for is not required to be, or is not submitted to the voters at a special election, and is not passed in its original form by the legislative body then it goes on the ballot for the approval or rejection of the electors at the next regular municipal election. The ordinance is adopted by a majority vote and goes into effect ten days after the vote is canvassed and declared by the canvassing board. No ordinance proposed by the people can be repealed except by vote of the people. There can be not more than one special election in six months but any number of petitions can be voted on at one election. Sample ballots must be mailed to every voter ten days before the election. The proponents of the petition may have printed on the sample ballot arguments for the measure in not more than 300 words and the legislative body has an equal chance to oppose it. A petition of 10 per cent of the electors in protest of any ordinance passed by the legislative body except an emergency ordinance or an ordinance calling or otherwise relating to an election, suspends such ordinance from going into operation and if the legislative body does not reconsider and entirely repeal the same it must go to the voters for approval or rejection.

The California Constitutional Amendment submitted to the voters at the election and defeated would have made slight changes in the present law by providing that no law creating a bonded indebtedness should be enacted by initiative of the electors without the assent of two-thirds of the qualified electors voting. At present a majority vote suffices. Authorization was also to be given the legislature to pass appropriate legislation to protect initiative and referendum petitions from fraud and misrepresentation.

New Jersey. In New Jersey an amendment providing that any future constitutional amendment passed by two successive legislatures could be submitted to the vote of the electors in any year but once

defeated could not be brought up again for five years, was lost. Another proviso of this proposed amendment required that every amendment must be submitted and voted on separately.

ARTHUR CONNERS.

*Bureau of Legislative Information
Indianapolis, Ind.*

Administration and Supervision of State Charities and Corrections.

There is little uniformity among the charity and correction systems of the various commonwealths of the United States, either in statutory law or in the practical working out of the system. No two States have the same law, and States with similar laws work out their problems in many different ways, owing primarily to the different conditions which confront the State or to the different development of charity problems in each State. However, state supervision or administration, through a state board, is now almost universal. Of the forty-eight States, forty-two have some form of supervision by the State. Six have no state supervision except such perfunctory inspection as may be made by the governor or legislature at annual or biennial intervals, the whole power over state institutions resting with the individual boards of trustees.

There are at least seventy boards and commissions in the United States which deal with some part of the problem of state supervision of charities and corrections. Of these, four consist of a single individual. Alabama has a state prison inspector, New Jersey a state commissioner of charities and corrections, New York a fiscal supervisor of charitable institutions and Oklahoma a state commissioner of charities and corrections. There are several minor state boards such as the Ohio and Massachusetts commissions for the blind and the New Jersey state board of Children's guardians.

For purposes of analyses, however, the larger state boards may be divided and classified according to the three main divisions of the general field of charities. Those fields are broadly (1) penal and reformatory institutions; (2) institutions for the insane; and (3) strictly charitable institutions. In a few States such as Alabama, Georgia, Nevada and Texas, the only state board is that over penal institutions—the prison commission as it is called. Twelve States have such boards over their penal institutions, usually, however, with another board in at least one of the other fields. Seven States have separate boards over the insane.

By far the most common, however, are those States which have but

a single board over all three fields. There are twenty-two States with such a single board over all three fields. Four States have two boards over the three fields; that is, either a single board over the insane and charitable institutions with a separate prison commission over the penal institutions, or a charity board over both the penal and charitable institutions, with a separate board over the insane. Massachusetts and New York have a separate board for each of the three fields, while California has separate boards for each field with an additional fiscal board over all.

Again some States have two boards over the same institutions—the “dual system” as it is called, which is described later on. One of the boards is administrative or fiscal, the other is supervisory. These States are California, Illinois, Minnesota, Nebraska, New York, Ohio, Oklahoma, Rhode Island and South Dakota.

In the duties and powers of boards in the same State there is also wide discrepancy. The prison commission may be administrative, the charity board supervisory. There may be a dual system over the charities, while in the same State the prison commission may be supervisory and the lunacy commission administrative, as is the case in New York.

Again there is considerable difference in the scope of the authority of all of these boards. Some may be strictly confined to the supervision of state institutions, while others may have power of inspecting and investigating local and county institutions and even private charity organizations. Some may be given duties which emphasize the fiscal side of the institutions, while others may be specifically forbidden to interfere in any way with the administration of the institutions.

In a few States the boards have control or supervision of certain groups of institutions located close together. Such is particularly the case in Rhode Island. Certain States, including Minnesota, Rhode Island, South Dakota and Vermont have special state boards of visitors to state institutions, while many of the southern and western States with well developed county systems supplement the work of the state boards with boards of county visitors or county boards of charities.

In the main, however, certain tendencies may be noted. The larger States, which have several institutions in the same class; that is, several hospitals for the insane or several penitentiaries tend to divide the work of charity supervision by placing a separate board over such institutions. There is no such tendency in most States, either because the area of the State is small, or because there are but one or two institutions in the same class, so that one board can cover the whole State satisfac-

torily. Each State usually has some one problem predominating—the care of paupers, children, insane or criminals, and such a State tends to develop a board whose essential function is to care for this particular class. Thus in Massachusetts the Board of Charities has two subdivisions, caring for adult paupers and for dependent children. In Illinois the board of administration finds the insane the chief problem. In Georgia and other southern States where general charity work upon the part of the State is but little developed, the convict presents the chief problem. In nearly every State a large part of charity work still devolves to a considerable extent upon private philanthropic organizations or upon local or municipal organizations. The State Charities Aid Association of New York is the most notable example of such a private organization whose work has been of great importance.

It should always be borne in mind that in the majority of States the administration of institutions is still in the hands of individual boards of trustees rather than under a centralized state board. Thus in at least twenty-nine or 60 per cent of the States, the separate boards of trustees are still charged with the administration of state institutions. Even in States having central administrative boards, the institutions in one or more of the fields of charity supervision may still be under separate boards of trustees. The presence of supervisory boards of charities does not change the function of these individual boards in the slightest degree. Even where there are so-called boards of control, the individual boards of trustees may still exist in the same field, though often with modified powers. This is notably the case in California, New York and Rhode Island.

In spite of this great variety, the various state systems may be divided into three large groups or types—the supervisory, the administrative and the dual. The boards under all of these systems have certain minor characteristics in common. The members are usually appointed by the governor, with or without the advice and consent of the senate. All of the boards are allowed to appoint a secretary, usually at a fixed salary, together with such clerical assistants and special agents as may be necessary. Thus Indiana has a staff of thirteen besides the secretary, while Iowa has fifteen.

To point out the fundamental characteristics of each system, three States are taken as examples. In each of these, the particular system is working with marked success, and the law creating each system is in the main quite typical.

Indiana has eighteen state institutions, each of which is administered

in all details by a separate board of trustees. These boards have all powers of appointment, supervise the purchase of supplies, by contract or otherwise, and methods of caring for the inmates. There is absolutely no connection between the managements of the various institutions. State supervision of these institutions is vested in a board of state charities consisting of six members appointed by the governor who is ex-officio member and president of the board. Regular meetings are held quarterly or more frequently if deemed necessary. The members receive no compensation.

The board "shall investigate the whole system of public charities and correctional institutions of the State, examine into the condition and management thereof, especially of prisons, jails, infirmaries, public hospitals and asylums;" may prescribe such forms of reports and registration as it may deem essential to secure accuracy, uniformity and completeness of statistics. All plans for new jails and infirmaries shall, before adoption of the same by the county authorities, be submitted to the board for suggestion and criticism. At its discretion, the board may at any time make an investigation by the whole board or by a committee of its members, of the management of any penal reformatory, or charitable institution of the State, and in such investigation it shall have power to send for persons or papers and to administer oaths and affirmations.

The board has also the supervision of official out-door poor relief; is agent of the State in the supervision of all orphans' homes and associations supported in whole or in part from public funds; visits all institutions caring for neglected or dependent children; passes upon the fitness of associations proposing to incorporate for the purpose of caring for such children; and licenses maternity hospitals and all child caring institutions.

The board appoints a paid secretary who is also allowed his travelling expenses. The secretary is ex-officio member of the state board of truancy.

The powers of the board are entirely supervisory or, as that term is usually understood, advisory. It has no power to interfere in any way with the management of the institutions. The only executive power the board possesses is in passing upon the incorporation of charitable organizations, licensing certain classes of organizations and passing upon plans for jails and lockups.

Indiana also has county boards of charity which report to the State board and greatly supplement its work, This is peculiar to states hav-

ing well organized county systems, and is not, generally an essential element of the supervisory system as a whole.

The success of the Indiana board or system lies primarily in the personnel of the board. During nearly every year of its existence the board has had among its members men not only experts in the charity work of their own State, but men who have had national reputations in charity work.

Iowa—The Administrative Type. Iowa has a single centralized board of control, of three members appointed by the governor, each of whom receives a salary of \$3000 per year. The board has full charge over all state charitable institutions, appointing the superintendents and fixing all salaries. For minor employes, it fixes a graded scale of wages. Its fiscal control is emphasized. It receives monthly estimates from the superintendents and lays down laws and rules for the purchasing of supplies. It controls this purchase by estimates and contracts, but the actual buying is done by the heads of each institution. It has also fiscal supervision over the affairs of the educational institutions of the State. It has full powers of investigation, may summons witnesses, administer oaths and compel testimony. It is given power of visitation and inspection over county and private institutions for the insane, and over certain other private institutions. It is in addition given the duty of investigating the whole system of state charities, thus combining with its administrative functions some of the duties of the Indiana supervisory board.

It is usual for boards of this type to appoint only the heads of the institutions, allowing the latter to appoint the minor officials and employes. There is often found a provision prohibiting the members of the board from attempting to influence the superintendent in the appointing of the employes under him, in order to prevent the entrance of politics into the internal affairs of the institutions.

Illinois—The Dual Type. In Illinois there are two separate boards over the charitable institutions, one a board of administration, the other a charities commission. The board of administration consists of five members, appointed by the governor, who have executive and administrative control over all state charitable institutions excepting the prisons. It resembles the Iowa board in many respects. Its fiscal power is emphasized, and one member, styled fiscal supervisor, has special charge over the finances of the institutions. He inspects the books and provides a uniform method of accounting, examines the condition of the buildings and grounds and supervises the making of repairs. Act-

ing with a committee of the superintendents, he has charge of purchasing supplies by contract. The superintendents submit monthly estimates and the fiscal supervisor revises these, always referring important matters to the whole board. The board appoints the heads of the institutions, and fixes their salaries. It also establishes a graded scale of wages for the minor officials, who hold office under the civil service plan. The board in addition to its strictly administrative functions is also given power to inspect and investigate out-door poor relief, almshouses, children's homefinding societies, orphanages, lying-in hospitals and any place where persons are detained for treatment of nervous diseases; it also inspects county jails, city prisoms, workhouses, etc., and one of its duties is to collect statistical information concerning the inmates of all these institutions. It must visit each state institution at least quarterly. Each member receives a salary of \$6000 per year.

The charities commission consists of five members appointed by the governor, who receive no compensation. Its chief duty is to investigate the whole system of public charitable institutions of the State, examine into the management and condition thereof, especially of state hospitals and local jails and almshouses. In this it is quite similar to the Indiana board, having no mandatory powers. The charities commission may inquire, in its discretion, into the equipment, management and policies of all institutions and organizations coming under the supervision, administration or inspection of the board of administration. It maintains a special bureau of criminal statistics.

From this it is seen that the board of administration handles the business details of the state institutions and supervises certain other organizations, while the function of the charities commission is purely supervisory. The business of the former is primarily with institutions and organizations; the latter studies the whole charity problem in its broad aspects. The former has the responsibility for the management of each institution, its methods, both along fiscal lines and in the care of inmates; the latter is in these matters only a checking agency, but without powers which would bring the two boards into conflict. It would seem at first sight that the charities commission was simply a system of espionage upon the acts of the administrative board, but such does not seem to have been the experience of Illinois. The law was framed to create a harmonious system, not to establish two antagonistic boards. The charities commission, it is found, has a definite, separate sphere. Its valuable contribution to charity work lies in its educational policy. It holds quarterly conferences with the heads of the

institutions and other influential charity workers at which the more advanced problems are discussed. The reports and findings of the conference are published in a quarterly bulletin which is widely distributed throughout the State. Moreover, the supervisory board has an important influence over private charity organizations, and its opinions and advice have considerable weight with such societies, while on the whole this board tends to bring the private organizations into closer touch with the work of the State. The administrative board has a distinctly different attitude. It has power to compel many of the local institutions to conform to its recommendations and throughout the idea of its superior authority is predominant. The board of administration brings fiscal efficiency into the state institutions; the charities commission creates a uniform attitude throughout the State on all charity problems and secures cooperation between all the charity agencies, public or private, while it fosters and educates public opinion not only on the practical problems before the State, but also on the advanced methods which it is seeking to introduce and the more enlightened and scientific care and treatment of all classes of inmates, not only while in institutions, but after they have left, and on methods of prevention.

The distinguishing feature of the dual system lies in the existence of two boards over the same institutions. One board is purely supervisory or advisory. The other may have either complete control over the affairs of the institution, or administrative powers in fiscal matters only. The Illinois system is virtually a harmonious combination of the Indiana and Iowa boards.

CLASSIFICATION OF EXISTING STATE SYSTEMS

Six States have no state board for the supervision of charities. These are Idaho, Maine, Mississippi, New Mexico, Oregon and Utah. Five States have no other board besides a prison commission and in most of these States the boards are merely trustees for one or two institutions. But since these boards are state boards over that field which is particularly pressing in these States, and in a limited way do exercise supervision and administration over state charities, these boards have been included in the following classification and the state systems have been classified as though the board were fully a charity board over more than one field.

Fifteen States in the United States are essentially of the Iowa type. They are Arizona, Arkansas, Florida, Georgia, Iowa, Kansas, Kentucky, Montana, Nevada, North Dakota, Texas, Washington, West

Virginia, Wisconsin and Wyoming. Three of these are what are known as "ex-officio" boards; they consist of officials who already hold an office under the State, and the boards thus made up are not considered of great value in charity work. Arkansas, Georgia and Texas have only a single board of prison commissioners, with no state supervision in other fields. And their powers in that one field are inferior to the powers of the Iowa board. Kansas has two separate boards, one over the prisons and reformatories, the other over the charitable institutions and insane hospitals. Each board is similar in powers and functions to the Iowa board. Montana also has a second board, the board of commissioners for the insane, which is identical with the board of prison commissioners in personnel, and is therefore hardly to be considered an entirely different board, but rather the same board given a different name for its new functions.

There are sixteen States which are essentially of the Indiana or supervisory type. They are: Alabama, Colorado, Connecticut, Delaware, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, North Carolina, Pennsylvania, South Carolina, Tennessee and Virginia. Of these, twelve are strictly after the Indiana type; that is, they have a single board of supervision over all charitable institutions. These are Colorado, Connecticut, Indiana, Louisiana, Maryland, Michigan, Missouri, North Carolina, Pennsylvania, South Carolina, Tennessee and Virginia. A sub-committee of the Pennsylvania board, however, is practically an administrative board for the insane institutions. Delaware has a commission of two members, styled board of supervisors of state and county institutions in New Castle County. Although operating in only one of the three counties of the State, this is really a state board, created by the State and presumably confined to the county where the state's charity problem is most felt.

There are now eleven States which may possibly be classed under the dual system. These are California, Illinois, Minnesota, Nebraska, New Hampshire, New York, Ohio, Oklahoma, Rhode Island, South Dakota and Vermont. Of these only Illinois and Ohio are at all similar in the organization and functions given the boards, though the fiscal side of the state systems of New Hampshire and Vermont are very similar. The Ohio system was quite obviously modeled after the Illinois plan, although one essential change was made, the fiscal supervisor in Ohio not being a member of the board but merely an employee. In all the other States the conditions found are peculiar to that State.

The first fact in conclusion that seems self-evident is that the idea of centralizing or consolidating the administrative side of state institutions is now in great favor and is increasing in popularity. Since 1900 out of twenty-two boards created, fourteen were administrative; only nine supervisory boards being established in that time. The figures are much more striking if we consider the period within the past five or six years. Since 1908 only two supervisory boards have been established in what is strictly the field of charitable institutions. During the same period nine administrative boards have been created in that field. (Some of these administrative boards being in the dual system, of course.) Again, in the governors' messages for 1915 the governors of four States definitely urge the creation of an administrative board to have full control over state institutions. In only one State did the governor recommend the creation of a supervisory board, although the governor of Missouri in his message opposed the board of control idea. Hence there is clearly a very definite and positive tendency at present towards the centralization of the control of state institutions.

FREDERICK H. GUILD.

University of Illinois.

Mechanical Registration of Legislative Votes. Among the numerous devices developed and perfected for the regulation of legislative procedure, none is deserving of more thoughtful consideration than the installation of mechanical devices for the registration of the votes of the members of the legislative assembly. State constitutions invariably provide that an aye and no vote must be taken on the final passage of every measure. The time consumed in calling the roll, even by an energetic roll clerk, to ascertain whether a quorum is present, to suspend a constitutional rule, and on the passage of acts and resolutions, amounts in the aggregate to several days for each session. This traditional method is not only monotonous, burdensome and depressing, but it consumes time to no useful purpose and is particularly unsatisfactory in those States where the sessions are fixed by the constitution and where they have proved to be far too short to dispose the necessary business which the growth of modern industry has imposed upon legislative bodies. Wisconsin has taken one of the first steps to eliminate the traditional time-consuming practice of roll-calls. By an act approved July 29, 1915, the capitol building commission is required to purchase and install "an electrical and mechanical system for the instantaneous registration of the votes of the members of the

assembly on all questions requiring a roll call." The commission is authorized to expend as much as \$12,000 in the installation of this system, and the contractor is required to execute a suitable bond to keep the system in complete repair for a period of 5 years. The ultimate economy of a device capable of an instantaneous mechanical vote registration is undoubted, and the speedy introduction of similar systems in other States depends upon the accuracy which these machines are capable of attaining.

CHARLES KETTLEBOROUGH.

Secret Ballot in Argentine. An interesting and fundamental political event of outstanding importance of the present year is the employment of the secret ballot for the first time in the Argentine Republic, for the election of president. The secret ballot system was established in 1910, at the instance of the late President Saenz Pena. The president of Argentine is elected for a term of six years and is incapable of succeeding himself. It has been the custom of a president to name his successor; thus a close and unbroken coalition has been established between succeeding presidents and political traditions are thus perpetuated.

The voters are divided into two parties, the Conservatives and the Radicals. The chief dividing issue is the agrarian question; at the present time, the land is held by a few wealthy holders, members of the Conservative party; the Radicals demand a sub-division of these holdings and their distribution among numerous holders. The influence of well-distributed patronage, the efficient working of an effective machine, and in some cases the employment of the militia have stifled the expression of public sentiment and continued the Conservatives in power. The presence of a preponderating Radical sentiment has abundantly manifested itself in elections held under the new system. In Buenos Aires, a year ago, all of the deputies elected, to which the district is entitled, were Radicals. In the Province of Santa Fé, the second largest province in the republic, a Radical government was recently elected.

The system of counting votes in the Argentine is interesting; the ballots are all counted by a central committee and hence the results are not usually known until a month or six weeks after the election. Argentine also has a law which imposes a fine of \$10 on an elector who fails to exercise the right of suffrage. It frequently happens that a sufficient number of qualified electors fail to exercise the right of suf-

frage and a new election is called. The determination of calling a new election seems to rest with the central committee who count the ballots. The effect of the new system is also seen in the interest which the people are taking in the elections and the difficulty of obtaining candidates to run on the Conservative ticket.

CHARLES KETTLEBOROUGH.

Indianapolis, Ind.

The City-Manager Plan. Nearly eighty municipalities in the United States are now conducting their affairs under the city-manager plan of government. In most of these places the city manager is an adjunct of the commission form, acting as the commission's non-political, administrative and executive officer; in others his appointment has been arranged by special ordinance under the existing charter. The position is everywhere open to non-residents of the city in question; it is filled through appointment by the commissioners or councillors, the incumbent holding office during their pleasure. While the city manager's duties necessarily vary somewhat in different municipalities, in general his executive powers relate to the appointment, removal, and general control of all subordinates.

Although the city of Staunton, Va., has been using the scheme successfully since 1909, for the most part it has been in operation only from the beginning of 1914. During the last two years, the increase in the number of cities adopting this plan has been steady and as yet it shows no signs of abating. Thus far there are more cities in the south with city managers than in any other part of the country, the State of Texas alone having 9. By geographical division of States, the distribution is as follows: North Atlantic, 6; South Atlantic, 16; North Central, 24; South Central, 14; and Western, 8. It is seen, therefore, that the extreme eastern and western sections of the land have been less ready for the new method of administration than the southern and central portions. The two States which have the largest numbers of city-manager municipalities are Michigan and Texas (with 9 each); California comes next (6). Cities in five States (New York, Massachusetts, Ohio, Virginia, and Iowa) may adopt the city-manager plan by means of general charter laws providing this form as an optional type. Few cities with large populations have adopted the plan; in fact, the majority have less than 10,000. Yet Dayton, Ohio, the largest city-manager municipality, is also the one from which we get most favorable reports and where the scheme seems to be working with most conspicuous

results. In two other large cities its adoption is just at present being urged. Ex-Mayor Blankenburg has recently recommended that for Philadelphia a short ballot and an appointed city manager "would produce best results in a city as large as Philadelphia." In Richmond, Va., a similar change in its charter, which is one of unusual complexity, is advocated.

As yet data relating to the actual operation of the city-manager plan is rather scarce and not wholly trustworthy; its general working may be briefly summarized, however, from the answers returned by some of the city managers themselves in response to a questionnaire sent out a few months ago by the bureau for research in municipal government at Harvard University. This questionnaire was sent to several of the more important cities having this type of administration; the replies received are interesting and significant, although there has been slight opportunity for verifying the statements. The cities from whom data was received are Dayton and Springfield, Ohio, Jackson and Manistee, Mich., Sherman and Amarillo, Tex., La Grande, Ore., Bakersfield, Cal., and Staunton, Va. Questions were asked in regard to the attitude of citizens toward the scheme, and its effect upon financial administration, public improvements, public safety, and public health.

In general, people living under the administration of a city manager are satisfied with its workings. Where it has been in operation for a couple of years, as in Dayton and Springfield, Amarillo, and La Grande, the general attitude towards it seems to be favorable, especially in the case of business men, chambers of commerce, citizens' leagues, etc. Where the laboring classes and the Socialists are concerned, however, the sentiment is not favorable, even to the extent, in Dayton and Springfield, of being opposed to the plan. In Jackson and Manistee laborers are reported as being well-disposed, and in Jackson one of the commissioners is a labor union man.

As for practical results during the short period of operation, the greatest good seems to have come in the field of financial administration. This has been shown in an all-round improved condition of finances—floating debts have been liquidated, customary bond issues to meet current expenses have not been issued, etc. Several places report a lowering of tax rate; in Manistee the decrease is \$7.43 per thousand. Improved methods of accounting and of budget-making have been installed in these cities, although the segregated type of budget is not uniformly used. The budget estimates are presented to the council, however, by the city manager, and in at least two cities,

Dayton and Jackson, a uniform classification of items has been provided. Not the least factor in the better regulation of the cities' financial affairs, is the central purchasing agencies by which all these cities obtain their supplies; in the smaller municipalities this is done by the city managers, in the larger by separate officials. In Dayton, during the year 1914, a saving of \$20,000 is calculated to have been made through the purchasing of supplies alone.

A list of the public improvements effected in these specific city-manager cities would be long. It is sufficient to say that special attention has been paid to such things as parks and playgrounds, sewer construction, concrete bridges, and better fire-protection service. In the matter of street maintenance alone, a general improvement has been shown, particularly as regards street cleaning and repairing. In Dayton direct labor has been used for public improvements, with a considerable financial saving, and in all the cities the work done by contract has had unusually careful supervision. No noticeable results in producing new city plans have appeared, although city-planning boards have been organized in several of the cities.

The condition of the police and fire departments under the jurisdiction of a city manager is good. In most cases the police department has been subjected to a thorough reorganization and new systems of record-keeping put into force. Two cities report a large reduction in the number of arrests. Special attention has been given to the equipment of the fire departments, which have up-to-date apparatus. The equipment is mostly motor-drawn.

Another department which has been more or less reorganized in line with advanced ideas is that which concerns the public health. More stringent health laws, the appointment of public health officers, free clinics, a tuberculosis dispensary, public nurses, a city laboratory—these are some of the specific improvements which these cities have instituted for a better condition of public health. The inspection of milk and of the food supply in general receives far more attention than before the advent of the city manager.

From the foregoing it may be seen that, while improvements have resulted all along the line since the adoption of the city-manager plan, the changes are such as might have taken place under any efficient administration. It does seem to be true, however, that in financial matters a city manager is able to make substantial improvements, and in this department considerable savings may be expected in all cities after a sufficient period has elapsed to put the new plan on its feet.

This result will in turn react on the efficiency of other departments. It may be of interest to note the advantages which are found in this form of government by the city manager of the largest city that has adopted it. These are simplicity, the basis of efficiency and economy in organization, centralized authority, fixed definite responsibility, business methods, prompt and effective action, employment of experts when needed, commissioners who represent the whole city and not merely a ward, interest shown by a higher type of men in city service, short and non-partisan ballot, abolition of politics from the administrative end of government, separation of legislation from administration, independence from the ballot in selecting trained men for particular functions of government.¹

Financial statistics concerning the cities of Dayton and Springfield under the mayor-and-council form of government in 1913 and the commission-manager plan in 1915 may be found in a pamphlet issued on February 24, 1916, by the United States bureau of the census. This is entitled *Comparative Financial Statistics of Cities under Council and Commission Government, 1913 and 1915* (15 pp.) and contains figures for eight cities in each of three groups which average in population 94,000, 82,000, and 69,000, respectively. A full list of material on the city-manager plan has recently been compiled by the division of bibliography of the Library of Congress, with periodical references down to the close of 1915.

ALICE M. HOLDEN.

Harvard University.

¹Address of Henry M. Waite, city manager of Dayton, at the annual meeting of the Civic League of Cleveland, February 29, 1916.

NEWS AND NOTES

PERSONAL AND BIBLIOGRAPHICAL

EDITED BY CHARLES G. FENWICK

Bryn Mawr College

The program committee of the American Political Science Association is developing plans for the Cincinnati meeting of next December and will welcome suggestions from members, or from other persons interested, concerning any phase of its work. The members of the committee are: Prof. Frederic A. Ogg, of the University of Wisconsin, chairman; Prof. William B. Munro, of Harvard University; and Mr. John A. Lapp, of the Bureau of Legislative Information, Indianapolis.

Dr. W. W. Willoughby, professor of political science at the Johns Hopkins University and managing editor of the REVIEW has accepted appointment as deputy legal adviser to the Chinese government for one year, and will leave for Peking in May. During his absence, Professor Willoughby's course at the Johns Hopkins in United States law will be conducted by President F. J. Goodnow; and his seminary will be under the direction of Prof. J. H. Latané. President Goodnow will continue to act in this country as legal adviser to the Chinese government.

Arrangement has not yet been made for the managing editorship of the REVIEW.

Prof. J. S. Young of the University of Minnesota has been granted leave of absence for next year. He will spend a considerable portion of the year at Washington in an investigation of certain questions of state and local government.

Mr. William Anderson, instructor in municipal government at Harvard University, has been appointed to an instructorship in political science in the University of Minnesota.

Mr. Francis W. Dickey, who has been instructor in political science at Western Reserve University, has been appointed professor of government and economics at LaFayette College.

Prof. A. B. Hall of the University of Wisconsin during February made an extended trip, visiting the universities of the middle west. He lectured at university convocations under the auspices of the Carnegie Peace Foundation.

Prof. Stanley K. Hornbeck will publish this spring through the Appleton Press a volume on *Contemporary Politics in the Far East*. The Appletons' announce as one of their volumes appearing for the spring trade: *Caribbean Interests of the United States* by Prof. Chester Lloyd Jones.

A number of professors in the University of Wisconsin have been conducting in Milwaukee before the Frei Gemeinde a course of extension lectures dealing with political science subjects.

Mr. Chester A. McLain has been appointed lecturer on constitutional law and Mr. A. C. Hanford instructor in municipal government at Harvard University.

Lamar T. Beman, whose volume in the Debaters' Handbook Series on *Prohibition of the Liquor Traffic* was published last November, has been appointed to a position in the cabinet of the mayor of Cleveland as director of public welfare.

Mr. J. F. Marron, legislative reference librarian of the Texas State Library, has recently been elected a director of the Texas Public Health Association, known until recently as the Texas Anti-tuberculosis Association.

Mr. E. A. Cottrell, instructor in political science at Wellesley College, has been engaged to conduct a survey of the public works department of the city of Newton, Mass., during the coming summer.

Professor Barrows, of the University of California, is on leave of absence and is working with the Belgium Relief Commission at Brussels.

Prof. R. C. Brooks, of Swarthmore College, is to give courses on the American and Swiss governments at the University of California during the summer session.

Prof. Robert T. Crane, of the University of Michigan is to give courses in international law, Latin American relations, and municipal government at the Johns Hopkins University during the summer session.

Prof. G. Lowes Dickinson of Cambridge University, England, gave two lectures on the McBride Foundation at Western Reserve University, March 5 and 6. The subjects of the lectures were "The Freedom of the Seas" and "Reconstruction after the War."

William Howard Taft lectured at Cornell University from February 16 to 19 on the following topics: "Our World Relationships;" "Preparedness;" "The League to Enforce Peace;" "The Supreme Court and Popular Self-government." Professor Taft will return to Cornell in May to give another series of lectures on kindred political subjects.

A series of five lectures on "Conditions of National and International Peace" were delivered this winter at the University of Illinois by Dr. James Brown Scott of the Carnegie Endowment for International Peace. It is expected that they will later be published in book form.

Dr. Frank J. Goodnow, president of Johns Hopkins University, delivered two lectures at Brown University under the new Colver foundation on March 15 and 22. His subjects were the "American Theory of Private Rights" and the "American Theory of Government."

Frank Backus Williams, Esq., of the bar of New York City, delivered a course of four lectures on "The Law of City Planning" at the University of Michigan during February.

Prof. Ernst Freund, of the University of Chicago, has in preparation a volume on *Principles of Legislation*.

The first quarterly number of the *Commonwealth Review of the University of Oregon* has appeared. In the words of the editor, Prof. F. G. Young, the new journal is intended to facilitate the coöperation of the university "with responsive personalities and agencies throughout the State in developing constructive ideas and plans for social progress." It will serve as a permanent record of the most important discussions at the annual "Commonwealth Conferences," and afford opportunity for additional discussion of public reforms.

The inaugural meeting of the new Chinese Social and Political Science Association took place on December 5, 1915. The association is the first of its kind in China and is regarded by its founders as marking a new era in the scientific study of political and social questions in China. The objects of the association, as stated in its constitution, are "(1) the encouragement of the scientific study of law, politics, sociology, economics and administration, and (2) the promotion of fellowship among men of similar interests." In order to avoid any suggestion that the association might develop into a political organization, it is provided in the constitution that the association shall not assume a partisan position upon any political question nor involve itself in practical politics. At the meeting on December 5, Mr. Lee Cheng-hsiang, the acting secretary of state and minister for foreign affairs was elected President. The American minister, Dr. Paul S. Reinsch, was elected first vice-president, the other officers being Chinese. Mr. W. F. Willoughby and Mr. Ronald MacCay, councillor of the British Legation, were elected to the executive council. In his address before the meeting Mr. Lee Cheng-hsiang expressed the hope that the association would help to strengthen the intellectual relations between the people of China and those of other countries, and he praised the efforts of Dr. Reinsch and Dr. Wellington Koo, the Chinese minister to the United States, in promoting the association. In reply Dr. Reinsch pointed out the significance of national academies for the advancement of scientific work as representing the coöperation between men of science in their respective branches. These associations, he said, form a connecting link between the individual scientist on the one hand and the scientific intelligence of the nation and of the world on the other. He then spoke of the rich field for investigation in China by reason of the long historical experience of the Chinese nation and the great variety of local conditions, and he predicted the important part the association would play in the intellectual life of the nation. The association intends to publish a quarterly review in the English language dealing with the various subjects that come within the scope of its interests. It is intended to give the association an international character by inviting jurists and political scientists in all countries to become members. The annual dues are three dollars in America, or twelve shillings in England.

The tenth annual meeting of the American Society of International Law was held in Washington, D. C., April 27-29. The subjects dis-

cussed were: (1) The relation of the exportation of arms and munitions of war to the rights and obligations of neutrals. (2) The rules of law which should govern the conduct of submarines with reference to enemy and neutral merchant vessels and the conduct of such vessels toward submarines. (3) Should the right to establish war zones on the high seas be recognized and what, if any, should be the provisions of international law on this subject?

The American branch of the League to Enforce Peace will hold its first national assemblage in Washington, D. C., May 26, 27. Ex-President Taft will preside. The purpose of the meeting is declared to be "to devise and determine upon measures for giving effect to the proposals adopted at the Conference held last in Philadelphia for a League of Nations to Enforce Peace." These proposals are:

We believe it to be desirable for the United States to join a league of nations binding the signatories to the following:

First: All justiciable questions arising between the signatory powers, not settled by negotiation, shall, subject to the limitations of treaties, be submitted to a judicial tribunal for hearing and judgment, both upon the merits and upon any issue as to its jurisdiction of the question.

Second: All other questions arising between the signatories and not settled by negotiation, shall be submitted to a council of conciliation for hearing, consideration and recommendation.

Third: The signatory powers shall jointly use forthwith both their economic and military forces against any one of their number that goes to war, or commits acts of hostility against another of the signatories, before any question arising shall be submitted as provided in the foregoing.

Fourth: Conferences between the signatory powers shall be held from time to time to formulate and codify rules of international law, which, unless some signatory shall signify its dissent within a stated period, shall thereafter govern in the decisions of the judicial tribunal mentioned in Article 1.

The National Tax Association has begun the publication of a bulletin, the first issue of which is dated February, 1916. The *Bulletin* is to be the official organ of the association, and is to be issued periodically, at least nine issues during the year. "It is intended for circulation among the members to keep them advised on topics of current interest. It is planned to make this *Bulletin* a real and substantial help to those wish-

ing to keep up-to-date in tax matters and to make it a medium for the intercommunication of ideas and suggestions by members and readers." The subscription price to members of the association is included in the annual membership dues. To non-members the price is \$2.00 per annum. Prof. T. S. Adams of Cornell University is the managing editor. The publication office is at Lancaster, Pa.

The Public Servant is the title of a new publication issued monthly by the Society for the Promotion of Training for Public Service. Mr. Edward A. Fitzpatrick, of Madison, Wis., director of the society, is the editor of this new publication which is to be sent to all members of the society, or which may be purchased for twenty-five cents a copy.

The Searchlight on Congress is the title of a new bulletin published monthly by the National Voters League with the general object of acquainting the people with their lawmakers and making public the details of congressional procedure and business. The first issue appeared on February 1 (Washington, 833 Woodward Building, subscription \$1.00 a year) and it is intended that successive issues shall give special emphasis to such matters as seem to require public attention at the moment, so that when the issues for a session are complete the public will be able to know what has been vital in that session in respect both to general and individual records. A distinct feature of the bulletin is the brief record of each days work in congress, which will prove a handy index to the Contressional Record. In December, 1915, the league published its first annual book, *Your Congress*, By Lynn Haines, which has as its sub-title "An Interpretation of the Political and Parliamentary Influences that Dominate Law-Making in America."

The *Labor Gazette* is a monthly bulletin launched in October, 1915, and announced as a non-partisan record of facts without editorial opinion or comment and not technical. Its object is to meet the demand for a regularly published summary of the material now published from so many different and widely scattered sources that is not available to the public at large. Each number will contain a record of labor disputes, conciliation, arbitration, cost of living, trade conditions, résumés of state and federal reports of labor and industry, etc., with special articles on current questions of importance. (Subscription \$1.00. 710 Southern Building, Washington, D. C.)

In the series of government hand books published by the World Book Company and edited by Profs. David P. Barrows and Thomas H. Reed of the University of California the services of Edward Porritt have been secured for a volume on the *Government and Politics of Canada*. Prof. R. C. Brooks is at work on the *Government and Politics of Switzerland*, while Prof. Herman G. James, and Dr. Fritz-Konrad Krüger are jointly preparing the volume on the *Government and Politics of Prussia*.

Prof. Frederic A. Ogg of the University of Wisconsin has in press a volume entitled, *Economic and Social Europe, 1750-1914*, to be published by the Macmillan Company in the early summer.

The trustees of Western Reserve University have voted to establish a school of applied social sciences, work in which will begin in September, 1916. One division of this school is to be known as the division of municipal administration and public service. The organization and work of this division will be under the direction of Prof. A. R. Hatton.

Cornell University has for several years offered a course in citizenship under the direction of Professor Willcox in which men and women who are actively engaged in civic and social work are invited to lecture to the students. Among those who have given lectures this semester are Dr. Roland Haynes of New York, field secretary of the Playground and Recreation Association of America; Mr. John Martin of London, who is in this country to lecture on municipal politics; Mr. Eugene T. Lies, secretary of the Illinois committee on social legislation and lecturer at the Chicago School of Civics and Philanthropy; and Mr. John A. Fitch, member of the staff of the *Survey*.

A committee of the Missouri State Teachers Association is promoting a movement to secure a constitutional convention for the revision of the Missouri constitution.

The University of Missouri *Bulletin*, Social Science Series no. 2, contains an article on "The Monroe Doctrine, Its Origin, Development and Recent Interpretation" by Prof. F. F. Stephens of the University of Missouri.

The State Historical Society of Iowa has recently published a volume by Dr. F. E. Haynes entitled *Third Party Movements Since the Civil War—With Special Reference to Iowa*. The work includes a survey of the liberal republican movement, the farmers' movement, the greenback movement, the populist movement and the Progressive movement.

The third annual municipal day at the State University of Iowa was held on Tuesday, March 28. The program included the following addresses: "The Reorganization of City Government," by Charles E. Merriam, professor of political science in the University of Chicago and member of the city council of Chicago; "What Dayton has Accomplished in Two Years under the City Manager Plan," by J. M. Switzer, member of the city council of Dayton, Ohio; "Home Rule for Cities and Towns," by A. R. Hatton, Professor of Political Science in Western Reserve University, Cleveland, Ohio; and "The Home Rule Movement in Iowa," by O. K. Patton, assistant in political science at the State University of Iowa.

The subject of the Morton Denison Hall Prize, established by the National Municipal League for the best essay on a subject connected with municipal government, may be selected from the same list suggested for the prize in 1915, or may be selected freely by the competitor subject to the approval of the secretary of the league. The competition closes on September 15.

A second edition of *Treaties, Their Making and Enforcement*, by S. B. Crandall (Washington, John Byrne, pp. 605,) brings the original work, published in 1902, down to date, and includes in addition an appendix containing a comprehensive digest of decisions of American courts construing treaties. The new edition is double the size of the old. A review of this work will appear in a later issue.

The National Conference on Immigration and Americanization met in Philadelphia on January 19 and 20. The conference was in charge of the national Americanization committee of which Mr. Frank Trumbull is chairman, and its object was to call together for the first time public and private agencies interested in Americanization. The proceedings of the conference together with the reports of the organizations participating will be published in a national handbook.

The immigration housing competition committee of the National Americanization Committee offers a series of prizes ranging from \$300 to \$100 for the best plans for low-cost dwellings which may be used as standard types in the work of the committee. The aim of this competition is declared to be: (1) to enlist the best professional skill of architects, engineers, draughtsmen, etc., throughout the country in solving one of the most acute social and industrial problems in America today: the housing of immigrant workmen in small industrial communities: and (2) to arouse American leaders in government education and business to the fact that the adoption and maintenance of an American standard of living is fundamental in the Americanization of immigrants.

In this movement the competition is, in a sense, a detail. It will be followed by public exhibits which will include not only the entries in the competition, but plans or descriptions of work already in operation in industries or communities. Through these exhibits, and through a wide-spread educational movement among employers and others in a position to put those plans into use, it is believed that better housing among immigrants in industrial towns will result, and that a practical safeguard for an American standard of living will thus have been secured.

An education committee of nation wide scope representing the engineers, architects and employers of the country is at work organizing this national campaign. They will appreciate any information concerning plans, sketches or models for houses or town planning already in operation, and any other suggestions one may care to make.

Further information may be obtained by addressing the committee at 18 West 34th Street, New York City.

The National Civic Federation held its sixteenth annual meeting at Washington, D. C. on January 17 and 18. The addresses on the opening day dealt chiefly with labor conditions and labor laws, while the addresses on Tuesday were divided between preparedness for national defense and immigration.

The complete official report of the proceedings of the 1915 annual meeting of the National Association of Railway Commissioners was announced by the Law Reporting Company as ready for delivery by the middle of February. The membership of the association includes all of the state public service, public utility and corporation commissions, which gives to its proceedings a wider scope than matters relating to railways alone.

Bulletin no. 97, published by the American Association for International Conciliation, contains the report of the special committee appointed by the Chamber of Commerce of the United States on the *Economic Results of the War and American Business*. The report contains constructive suggestions for the prevention of war by an agreement between nations to employ concerted economic and military pressure to compel nations which have proceeded to war to desist from military operations and submit the questions at issue to an international court or council of conciliation.

The *Final Report of the Committee on Taxation* appointed by Mayor Mitchel of New York City on April 10, 1914 was presented on January 5, 1916, and contains much useful material on the question of the untaxing of buildings and on various proposed sources of additional revenue in the form of income and personal property taxes together with increment taxes and super-taxes on land values. A valuable monograph in *The Exemption of Improvements from Taxation in Canada and the United States*, by R. M. Haig, Ph.D., instructor in economics at Columbia University, has also been published by the committee on taxation.

The Bureau of Municipal Research of New York City publishes in the January number of *Municipal Research* a series of articles on the general subject of "Responsible Government." The articles are followed by a memorial to the legislature of the State recommending an amendment to the existing law so as to provide for executive responsibility for the preparation of the annual budget and legislative procedure which will secure publicity in the consideration of the budget.

Federal Land Grants to the States, with special reference to Minnesota, by M. N. Orfield, Ph.D., which was published in March, 1915, as No. 2 of the *University of Minnesota Studies in the Social Science*, contains in addition to much historical and descriptive material a chapter on the authority of the federal government over the public domain. *Swamp Land Drainage* with special reference to Minnesota, by B. Palmer, M.A., appears as No. 5 of the same series and contains a chapter on drainage legislation in the several States together with judicial decisions relating thereto.

An enlarged edition of *Free Speech for Radicals* by Theodore Schroeder, published for the Free Speech League, contains an article on

"Methods of Constitutional Construction" in which the author advocates the "synthetic method" of constitutional construction, by which is meant the co-relation of all provisions which limit governmental authority with the object of deducing the meaning of freedom in a concrete case.

A few phases of social legislation find treatment in the new *History of the Family as a Social and Educational Institution*, by W. Goodsell (New York, The Macmillan Co., 1915, pp. 588). Chapter xii deals with the family during the nineteenth century and discusses changes in the economic, legal and social states of women, state intervention in the control of parental rights, and divorce legislation during the nineteenth century.

The New York State Library has issued a useful pamphlet (Legislation Bulletin 41) on the subject of *Mothers' Pension Legislation in New York and Other States* by W. E. Hannan, legislative reference librarian. The tabular digest of mothers' pension laws of twenty-eight states (facing p. 20) makes accessible information upon a branch of social legislation which has been adopted by the States almost simultaneously within the past three years.

Mr. Maurice S. Evans, whose volume on *Black and White in South-East Africa* entitles him in advance to a hearing upon the race problem, has contributed to its solution a valuable study of the race problem in the United States from a South African point of view. In *Black and White in the Southern States* (New York, Longmans, Green and Co., 1915, pp. xii, 299) Mr. Evans presents the results of an extended itinerary in the Southern States, and after considering the negro question from the social, economic and political points of view the author sums up his conclusions in a chapter entitled "The Future" in which he offers many constructive suggestions. The volume closes with a brief critical bibliography.

Students of political economy will welcome the new and enlarged edition of Ingram's *History of Political Economy* (London, A. and C. Black, 1915, pp. xix, 315). Professor Ely contributes an introduction showing the value of Dr. Ingram's work as marking the beginning of a new period in the study of political economy in which the theories of the classical school were questioned in favor of a more humanitarian

point of view. Prof. W. A. Scott contributes a supplementary chapter dealing with the work of the Austrian school and with recent developments in economic science in Germany, Great Britain, United States, France and Italy.

The relations between a railroad and the State which creates it and the action and reaction of legislature upon railroad and railroad upon legislature find interesting illustration in a *History of the Illinois Central Railroad to 1870* by H. G. Brownson Ph.D., published as Nos. 3 and 4 of Vol. iv of the *University of Illinois Studies in the Social Sciences*. Mr. Brownson first presents a sketch of Illinois in 1850 showing the circumstances which gave rise to the building of the Illinois Central which forms so conspicuous a portion of the state's history. Chapter ii deals with the land grant and charter and gives an interesting insight into the conflict between state policy and local needs. Subsequent chapters deal with the construction, traffic, and finances of the railroad, and with its effects upon the agricultural and industrial life of the State.

With the object of facilitating an intelligent understanding of modern problems of industry in relation to politics in Great Britain Mr. Cressy has published an *Outline of Industrial History* (London, Macmillan and Co., 1915, pp. 364). The greater part of the volume deals with the modern period and treats in turn of scientific and technical progress since 1870, facilities for commercial development, the evolution of industrial management, and industry and politics. It is a commonplace of criticism on industrial legislation, or the lack of it, that the general public has little understanding of what is needed and what is immediately feasible in that field. Mr. Cressy shows us modern British social legislation in its historical setting and enables us to comprehend its purpose and to estimate more accurately its possibilities of success.

The *Utilities Bureau*, which has been established as a nation-wide inter-city agency for bringing the combined ability and experience of American cities to bear upon the problem of public utilities, has published in its third number, January, 1916, the proceedings of the conference on valuation held at Philadelphia, November 10-14, 1915, under the auspices of the bureau. This conference was attended by a large number of the public service commissions of the country and was addressed by the principal leaders of thought in that field. The

report covers 227 pages and contains papers on various aspects of valuation. Two important papers on "Constitutional Protection in Valuation" were read by Director C. A. Prounty of the Interstate Commerce Commission and W. D. Kerr of Chicago.

As a result of the National Conference of Charities and Correction held at Baltimore in May, 1915, a national committee for standardizing children's laws has been appointed and is preparing an extensive campaign for the appointment of a commission in each of the States to undertake the compilation of all laws affecting children. The proposed new codes will cover every subject relating to children, particular attention being paid to the administration of laws for children in counties. Missouri has led the way with a children's bureau which has prepared a synopsis of laws and suggested a standard outline.

Les Sciences Juridiques et Politiques by F. Larnaude (Paris, Librairie Larousse, pp. 75, price fr. 0.75) forms one of a series of brochures bound in two volumes under the general title *La Science Française* and published by the minister of public instruction on the occasion of the exposition at San Francisco. The purpose of the publications is to show the part which France has played in each of the separate branches of science and the present volume admirably fulfills its object. After a brief review of political science before and after 1789 the author discusses the great writers and their works in the field of public law, administrative law, criminal law, civil law, public and private international law, the history and philosophy of law, and Roman and canon law. A bibliography of some 300 titles completes the volume.

With the increased interest in Latin American affairs the "*Brief Bibliography of Books in English, Spanish and Portuguese, Relating to the Republics Commonly Called Latin-American with Comments*" compiled by P. H. Goldsmith, director of the Pan American division of the American Association for International Conciliation, will prove of distinct value. The compiler unfortunately found it necessary to confine himself to listing only such books, some widely advertised and others of greater merit but less well known, which could be readily obtained in the libraries of New York City; and the haste with which the list was compiled has resulted in several serious omissions. The critical comments which are the sole justification for the bibliography are often scathing and somewhat flippant, not "slightly censorious" as the compiler describes them.

A referendum association has been formed in the District of Columbia whose object it is to keep in touch with the committee on the district and to call for a referendum on all important congressional proposals affecting the interesting of the association or of the city at large.

The Maryland Industrial Accident Commission has presented its first annual report (77 pp.) for the year November 1914 to October 1915. The report is drawn up by H. C. Hill, secretary of the commission, and contains the important rulings of the commission. The Oregon Industrial Accident Commission has also presented its first annual report (44 pp.). The Iowa Department of Justice has published a collection of legal opinions on various phases of the Iowa workmen's compensation act, the constitutionality of which has been recently upheld by the Iowa supreme court. Workmen's compensation legislation of 1914 and 1915 has recently been compiled and published by the Bureau of Labor Statistics of the United States Department of Labor in bulletin No. 185. This has been followed by bulletin No. 186 covering labor legislation of 1915.

Volume II of the monographs upon the government of Iowa, which Prof. Benjamin F. Shambaugh is editing under the title *Applied History*, contains a number of important articles upon public problems. Such subjects are considered as the reorganization of state government, home rule, direct legislation, equal suffrage, selection of public officials, the merit system, child labor legislation and poor relief. The series constitute a survey of Iowa government in all its branches, much of it interesting in other States as well.

Social Adaptation, by Lucius Moody Bristol, Ph.D, (Cambridge: Harvard University Press, 1915, pp. xii, 356) a work which was awarded the David A. Wells prize for 1914-1915, is a history of the doctrine of social adaptation in its various forms. It begins with Comte's positive philosophy and ends with a consideration of such latter day economists, sociologists, and psychologists, as Patten, Ross and Baldwin. In conclusion the author proposes a social philosophy which he calls social personalism. In general, the work may be described as a contribution to sociology, with the usual traits of subjectivism and logomachy, but possessing more than ordinary merit as a history of ideas.

The Proceedings of the Ninth Annual Conference of the National Tax Association (Ithaca, N. Y.: Nat. Tax. Assn. 1915, pp. 514) contain as

usual a large number of papers dealing both with the financial and economic principles of taxation and with the administrative methods of assessing and collecting the States' revenue. . . The separation of state and local revenues comes in for special attention. The annual address of the president of the association, Prof. E. R. A. Seligman, was entitled *The Next Step in Tax Reform*, and is devoted to a consideration of the shortcomings of a classified property tax, and to the advocacy of the substitution of income for property as a basis of taxation—for state and local purposes. If this is done, however, Professor Seligman points out that the federal income tax should be kept low.

International Law Notes is the title of a new monthly bulletin which, according to its announcement, will contain short articles dealing with questions of academic interest to international lawyers, but chiefly with public matters of practical interest to practitioners in private international law. "It will contain short reports from the various continental countries, the Americas, the British overseas dominions, and English and foreign colonies, chronicling from time to time any important and any legal discussions of international interest, it will also contain news likely to be of interest or service to practitioners, recording the activities of international law associations and international lawyers and practitioners—announcing the publication of any works published either in England or abroad likely to be of interest. Supplements will be issued from time to time dealing with important legislation of different countries, which will be issued at prices commensurate with the nature of the literary work involved and the size of the supplement." The first number of the *International Law Notes* bears the date of January, 1916. The annual subscription for Great Britain and abroad is nine shillings, sixpence. The English publishers are Stevens & Sons, Ltd., London, and the American agents, Baker, Voorhis & Co., New York.

The Great War, Causes of and Motives for, by G. H. Allen, Ph.D. (Philadelphia, Geo. Baries' Sons, 1915, pp. xxx, 377) is deserving of mention among the numerous war books on the market because of its well balanced narrative of the historical background of the war and of the negotiations immediately preceding it. The text is accompanied by nearly a hundred illustrations of persons and places, including a number of maps, and the book-making is of an elaborate character; but though popular in form the volume has intrinsic merit and the

author's judgments upon a number of difficult questions of diplomacy are scholarly and convincing. Further volumes in the series will deal with the moral forces underlying the conflict and the physical resources of the nations, and with the outbreak of hostilities and the military operations of the war.

In spite of its propagandist character the *Brewers' Year Book for 1915* (New York, 50 Union Square) contains a number of useful references upon various legal aspect of the liquor question. The report of the Vigilance Committee summarizes the legislation adopted in 1915 throughout the several States and gives special attention to the effect of prohibition upon the finances of the States. A number of articles comment upon the effect of prohibition in the warring countries, while others review the situation in New Zealand, Sweden and Iceland where special forms of prohibition have been tried. The question of the right of owners of breweries to receive compensation for the loss of their property by reason of prohibition laws is discussed at considerable length and comparison is made with the British attitude upon the question to show the injustice of the decision of the supreme court in *Mugler vs. Kansas*. An appendix contains tables of statistics relating to the production, distribution and consumption of liquor.

Two valuable studies of railway problems have recently appeared in the Columbia University *Studies in History, Economics and Public Law*. *Railway Problems in China*, by M. C. Hsu, Ph.D. (vol. lxvi, no. 2), is an attempt to present the important economic and political problems of railway development in China which have arisen chiefly in connection with the loan agreements with foreign powers by means of which most of China's railways have been built. Chapter iii deals with the struggle of foreign financiers for railway concessions, while succeeding chapters discuss in turn the foreign railways, railways built with foreign capital, the provincial railways and finally those built by the central government. Chapter ix deals with "International Coöperation" and takes up among others the question of American participation in the building of the Hukuang railways. A final chapter discusses the Manchuria railway problems and the clash with Japan over the control of the economic development of that section. *Railway Monopoly and Rate Regulation*, by R. J. McFall, Ph.D. (vol. lxix, no. 1) is an excellent study of the general principles involved in rate regulation upon the basis of cost-of-service taking the rate system as a whole. Chapter i discusses the reasons for regulation due to public

interest in the rates charged, the monopolistic character of railway enterprise, the valuable privileges conferred by the State upon railways, and other factors. Chapter ii treats of valuation as a criterion of railway ability to supply service, and furnishes a careful comment upon the difficulty of the task, the legal aspect of valuation and the various bases suggested for valuation, the author considering the cost-of-reproduction-less-depreciation as the fairest basis. Chapter iii takes up the second of the two elements of rate regulation suggested in *Smyth vs. Ames*, viz. what is to be considered as a "fair return" upon the value of railway property when ascertained. The author shows that no definite rate of return can be fixed owing to variations in the conditions of different railways, yet in general the returns must be sufficient to be attractive to new investors without whose capital the railroads could not expand to meet new demands for service. The study is commended as a piece of sound and convincing reasoning upon a difficult subject of legislation in which there is need of much caution.

American Government and Majority Rule, by Prof. Edward Elliott of the University of California (Princeton University Press, 1916, pp. 175, price \$1.25) is an interesting sketch of American political development written with the object of pointing out the fact that the American people have been hindered in the attainment of democracy by the form of government through which they have been compelled to act. From a mistaken view of popular government the framers of the Constitution undertook to prevent the tyranny of the majority by a system of checks and balances and of limited and delegated powers which has resulted in acknowledged inefficiency and which has made it possible for political leaders readily to thwart the will of the people. The first chapters of the book are devoted to a discussion of the development of popular control of government in the United States, while the sixth chapter, to which the others are directed, offers suggestions for the purpose of advancing "the simplification of government." The initiative, referendum and recall have been found to impose too heavy a burden upon the voter, whereas the commission type of city government indicates to us the true goal of democracy in the concentration of authority in the hands of a few persons over whom it is possible for the people to exercise immediate control. In applying the commission form of government to States the author suggests the concentration of authority in the hands of a governor and cabinet, a coördination of the executive and legislative branches, the abolition of one house of bicameral legislatures, and the adoption of the short ballot.

One of the most difficult problems of industrial combination with which the department of justice has had to deal is handled in the volume entitled, *The Commodities Clause*, by T. L. Kibler, Ph.D. (Washington, Jn. Byrne, 1916, pp. 178). The author gives a detailed account of the history and present status of railway and coal mining relationships in Europe and America, and this is followed by a careful analysis of federal legislation and the judicial decisions arising out of it. In conclusion the author offers a number of constructive suggestions based upon a consideration of concrete cases where the principle of dissociation has been actually applied. He is in favor of a leasing system in the case of coal mines owned by the State, and insists that no plan of regulation, such as by a federal commission, can be effective until the railways have been separated from the mining industry. To make this dissociation more complete the author has drafted several additional clauses amending the interstate commerce act and subsequent legislation.

Among the many volumes of an apologetic character in defense of Christianity in the face of warring Christian nations, Archdeacon William Cunningham's volume, *Christianity and Politics* (Boston, Houghton Mifflin Company, 1915, pp. 271) will be of special interest to those who know the author's earlier, *Christianity and Economic Science*. The present volume consists of a revision of the Lowell lectures delivered by the author in 1914, and is an attempt to examine the differences of opinion of the different bodies of Christians as to the mode of bringing Christianity to bear upon political life. The doctrines of Roman Catholicism, Anglicanism, Presbyterianism and the Independent Churches are considered in turn and the relations they attempted to establish between church and State are criticised. Following those chapters is a general consideration of "religion and public spirit," "humanitarianism and coercion," "class interests and national interests" and "Christian duty in a democracy." It is at times difficult to determine the author's own attitude and to select from abundant criticism some constructive plan; in general he appears to hold that religion should refrain from attempting to enunciate maxims which give direct guidance to political communities, and that it would do well to exercise to the full its unique power for dealing with the heart and conscience of individual men and thus bring its influence to bear upon society as a whole. In an appendix the attitude of the Church toward war is discussed at considerable length.

In its endeavor to promote friendly relations between nations the Carnegie Endowment for International Peace through its division of intercourse and education has made use of the medium of international visits of representative men who seek to build up a spirit of international sympathy and to develop mutual understanding between the nations. Accounts of visits to Japan have already been noticed, and these are now followed by a volume entitled, *For Better Relations with our Latin-American Neighbors* (Washington, 1915, pp. 186), describing a journey to South America by Robert Bacon. After a brief mention of the places he visited and of the official personages by whom he was entertained Mr. Bacon presents in an appendix a translation of the addresses delivered by himself and his hosts at the various receptions tendered to him. While the tenor of these addresses is much the same in each of the countries visited and while it is well known that official utterances of this kind must be heavily discounted, nevertheless it is not difficult to read between the lines and see evidences of a desire on the part of Latin-American countries to meet the United States half way in any proposals to bring the northern and southern republics into closer relations of friendship and commerce. Such projects as the American Institute of International Law with its subordinate national societies of international law, national societies of international conciliation similar to those formed in this country and in Europe, and the proposed Academy of International Law at the Hague, by bringing the leading jurists of the continent into personal contact cannot but help to dispel on the one hand our ignorance of South American culture and on the other the lack of confidence of the South in the political policy of the North.

The need of elementary law books compiled with the object of giving the student a bird's-eye view of the law has been further met by the publication of a revised edition of Fishback's *Manual of Elementary Law* by A. B. Hall (Indianapolis, Bobbs-Merrill Company, 1915, pp. xxxi, 515). The volume follows the lines of legal instruction common in many law schools and treats in turn of the nature and sources of the law, the law of torts, criminal law, the law of property, contracts, partnership and corporations, principal and agent, domestic relations, public law, and courts, remedies and procedure. Like Clark's *Elementary Law* the classification of the subject matter is based upon practical convenience rather than upon a scheme of jurisprudence as in Robinson's *Elementary Law*. An excellent little volume along somewhat different

lines and written for British readers is Geldart's *Elements of English Law*. There is still room for a more imposing treatise which will present elementary legal principles in their historical setting and trace the relation between them and the social life of the State, leaving it to text books upon individual subjects to present the details of the law. The serious objection to a summary statement of general principles is that the student is inclined to accept them as final, when they are in reality only half truths until they have received their proper qualification. The bald statement that "a neutral is bound to abstain from giving aid to the belligerents" (p. 497) cannot for lack of definiteness convey a true idea of the law.

Impartial critics must concede that American journalism has won a distinct triumph when one of its weeklies can present a record such as that of the *New York Nation* in the volume by Gustav Pollack entitled, *Fifty Years of American Idealism* (Boston, Houghton Mifflin Company, 1915, pp. viii, 468, price \$2.50). Part I is a contribution by Mr. Pollack on "The Nation and its Contributors," which appeared in briefer form in the semicentennial number of the *Nation* (July 8, 1915). Part II reflects the spirit of the *Nation's* comments, from year to year, on important questions of the day and contains many papers of great interest. An article on Chief Justice Chase comments upon his unfortunate ambition to be nominated as Democratic candidate for the presidency; an article written in 1877 on "Our Mexican Troubles" is an appropriate comment upon present conditions; the article on "The First Six Months of President Cleveland's Administration" might well have been written in the fall of 1913; the article in 1907 on "Working up a War" is a noble protest, worthy of a journal with anti-militaristic traditions. Part iii consists of a number of representative essays on various subjects: "Neutrals and Contraband" is a strong and logical argument in the presence of the Franco-Prussian war against the right of a belligerent to impose upon neutrals the duty of preventing their subjects from engaging in contraband trade, while "The Morality of Arms-Dealing," written in 1871, shows the inconsistency of those who admit the right of a nation to furnish supplies of arms to other states which are preparing for war, yet who assert that the moment war breaks out the neutral, in continuing to furnish such supplies, is guilty of a crime against humanity. "War and the preparation for war," says the writer, "are parts of one great transaction, which must in the forum of morals stand or fall as a whole." Whether the reader agree or not

with the opinions expressed in so wide a range of editorial comment upon current questions, he must nevertheless lay aside the volume with a sense of admiration for the consistency with which the *Nation* has pursued through fifty years its policy of judging of men and affairs according to its high standard of political morality.

In a new volume entitled *Leading Cases on American Constitutional Law* by L. B. Evans (Chicago, Callaghan and Company, 1916, pp. xxix, 445, price \$2.75 net) the editor has endeavored to meet the needs of students in law schools, who give a relatively small portion of their time to constitutional law, and of college and university classes in government and constitutional history. With this object in view greater emphasis has been placed upon those branches of the subject in which new questions are coming up than upon those in which the law is fairly well settled. Some few subjects, such as eminent domain and bankruptcy, have been omitted altogether for the sake of fuller treatment of other subjects. By contrast with McClain's *Cases* and the successive editions of *Selected Cases* by Barnes and Milner, the editor abandons the order of subject matter as presented in the constitution and adopts an arbitrary classification by topics. At the head of each section, however, the pertinent clause of the Constitution is reprinted. It must always be a question as to just which decisions of the supreme court embody an application of the law which may be taken as a general rule apart from the particular case in hand. Nothing could be more misleading than to offer the student a series of illustrative cases without repeated warning of their limited value as showing the application of a general principle to certain specific facts. This danger is largely obviated in the present instance by a series of footnotes which the editor has appended to most of the cases and which will prove extremely valuable in directing the attention of the student to other phases of the subject. The notes contain comment on the importance of the decision, citation of related cases in which the same principle has been applied, with occasional reference to legal literature bearing upon the particular topic; they give a unique character to the collection and will materially aid the instructor in adapting the volume to the use of more or less advanced classes.

In a *History of the Democratic Party Organization in the Northwest, 1824-1840*, (Columbus, Ohio: The F. J. Heer Printing Company, 1915) Dr. Homer J. Webster of the University of Pittsburgh describes the

genesis of the convention system of nomination and the committee system of party management in the States of Ohio, Indiana, Illinois, and Michigan. He traces the coördination and extension of organizations from the county and township "meetings" and committees of "correspondence" and of "vigilance" to the elaborate district and state organizations and the choosing of delegates to national conventions. The new system was welcomed in Ohio as a means "to prevent the few from imposing on the public by holding secret meetings to get themselves or friends into office;" but in Illinois where organization was slower it was at first considered a "Yankee contrivance . . . depriving each man of the right to vote for a candidate of his own selection and choice," a characterization which, in this era of "direct" methods, has a familiar ring. The monograph is one of the Ohio Archaeological and Historical Society publications.

In a volume entitled *Les Institutions Politiques de l'Allemagne Contemporaine* (Paris: Félix Alcan, 1915, pp. 271) Prof. Joseph Barthélemy has subjected to acute analysis the constitution of the German empire and its constituent states with a view to determining in how far they may be said to make provision for popular or truly representative government. Though written with a clear *parti pris*, the volume is a substantial contribution to political science. The reviewer is not acquainted with any other work which brings out as clearly that German constitutional theory as well as practice has never committed itself to the proposition that public opinion, whether expressed through elected representatives, or otherwise, should be permitted to exercise a decisive influence in determining the policies of the state. The constitutions of most of the states of the empire contain definite expressions regarding the exercise of the suffrage which limit the popularly representative character of the elective chambers, and these chambers, when elected, are given no powers which make their control of dominant importance. The members of the imperial reichstag are selected upon a popular basis, but the significance of this is greatly lessened by the manner in which seats are distributed, by the influence which the "government" exerts in elections, and by the relatively slight power the chamber possesses as compared with the Bundesrath. And of course there is the fundamental fact that the Reichstag was created and given a popular basis not so much to satisfy a demand for republican government as it was to give expression to that feeling of national Germanic unity upon which the empire itself was founded.

DECISIONS OF AMERICAN COURTS ON POINTS OF PUBLIC LAW

JOHN T. FITZPATRICK

Law Librarian, New York State Library

Aliens and Nonresidents—License Tax to Fish. Ex parte Gilletti. (Florida, December 8, 1915. 70 S. 446.) The State may by the imposition of a license tax upon aliens and nonresidents, without denying to any person within its jurisdiction the equal protection of the laws, justly discriminate in favor of its citizens in regulating the taking for private use of the common property any fish found in the public waters of the State, where such regulations have a fair relation to and are suited to conserve the common rights which the citizens of the State have in such fish as against aliens and nonresidents. The equal right of all persons residing within a State, whether citizens or aliens, to labor therein, does not include an equal right of an alien to participate in the common property and privileges that are peculiar to citizens.

Blue Sky Law—Constitutionality. N. W. Halsey & Co. vs. Merrick. (United States, December 30, 1915. 228 Fed. 805.) The Michigan Blue Sky Law which prohibits the sale in the State of the stock or securities of any investment company until it shall have obtained the approval of the state securities commission, which is authorized to make any examination it may see fit of the business and property of the company at the company's expense and to withhold its approval if in its opinion a fraud would be worked upon the purchasers of such stock or securities, is unconstitutional as imposing a direct restriction upon interstate commerce in such securities. The fees to be paid, the delays imposed, and the large, often very large, expense in furnishing information and conducting examinations, amount to a practical prohibition of all small dealings in securities.

Charities—Regulation by Municipalities. Ex parte Dart. (California, February 3, 1916. 155 P. 63.) The occupation of soliciting contributions for charitable purposes may be regulated by municipal ordinance providing for reasonable supervision of the persons engaged, and for the application or use of the contributions received for the purposes intended; but a city ordinance creating a municipal charities commission which gives the commission arbitrary power to forbid any person from soliciting for charity regardless of his worth or fitness, is unconstitutional so far as giving such arbitrary power.

Convict Labor—Right of Remuneration—Slavery. Anderson vs. Salant. (Rhode Island, January 25, 1916. 96 A. 425.) The provision for the leasing of convict labor is not in violation of the constitutional inhibition against slavery. The term "slavery" as used in the Constitution and the earlier statutes implies African slavery, and denotes that civil relation in which one man has absolute power over the life, fortune, and liberty of another, a slave being a person wholly subject to the will of another. This is particularly true in view of the long continued legislative acquiescence in the sentencing of convicts to hard labor. The employment of a convict upon the materials of the contractor does not change his condition as a convict into that of a slave either of the State or of the contractor and such a convict is not entitled to remuneration for his services from the contractor where he is legally serving a sentence under a proper commitment.

Courts—Jurisdiction—Comity. United States vs. Marrin. (United States, October 22, 1915. 227 Fed. 314.) Comity arises out of necessity. If a person be answerable to two different jurisdictions for offenses against the laws of each, it is a physical fact that he cannot be, at the same time, in the separate control of each. It is therefore necessary that one jurisdiction give way to the other for the time being. It is convenient and desirable that there be a rule by which it can be determined which authority shall make way for the other. This rule is that known as the rule of comity. It answers with courts and cabinets, in law and in diplomacy, substantially the same purpose which personal courtesies serve in the social relations of life. One of the principles is that the court which first asserts jurisdiction may continue its assertion without interference from the other.

Crimes—Committed Partly Within and Partly Without State. People vs. Zayas. (New York, January 25, 1916. 111 N. E. 465.) Under a provision of the penal law that a person who commits within the State any crime, in whole or in part, is liable to punishment within the State, it is not necessary that the transaction should constitute a crime under the law of the foreign State where parts of the acts are committed; it is sufficient that the transaction would be a crime under the laws of the State where the statutory provision is in effect.

Eminent Domain—Condemnation of Public Utility Property—Judicial Power. Marin Water Power Co. vs. Railroad Commission. (Calif-

fornia, January 17, 1916. 154 P. 864.) Where the provisions of a state constitution declare the legislative power to confer jurisdiction upon the railroad commission plenary, and declare the commission to have such power to fix the compensation to be paid for property of any public utility acquired by public corporations as the legislature may confer upon it, an act empowering the commission on petition of any water district intending to take by eminent domain the property of any existing public utility to fix the compensation, is valid. The power given the commission is judicial; judicial power being the power to determine what shall be adjudged or decreed between the parties and with whom is the right of the case; determination of the rights of the individual under the existing laws; the ascertainment of existing rights; the determination of controversies between parties; the power to investigate, declare, and enforce liabilities as they stand on present or past facts and under the laws supposed already to exist.

European War—Judicial Notice of. United States vs. Hamburg American Co. (United States, January 10, 1916. 239 U. S. 466.) The United States supreme court takes judicial notice of the European war. Where a question has become moot because of the inevitable legal consequences of that war, the court will not pass upon such question. So, an action brought to dissolve a combination of steamship lines will not be decided at present where, because of the war, the steamship business between the United States and Europe has been interrupted and the renewal or re-creation of the combination in the future is merely problematical.

Extradition—Good Faith of Demanding Country. In re Lincoln. (United States, November 19, 1915. 228 Fed. 70.) It is not part of the proceedings nor of the hearing in the federal courts, upon a demand for the extradition of one charged with crime in a foreign country, to exercise discretion as to whether the criminal charge is a cloak for political action, or whether the request is made in good faith. Such matters are questions for the Secretary of State to determine, and it is for him to decide whether the foreign government may be trusted to live up to its treaty obligation and whether one extradited will not be tried or punished for a political offense.

Foreign Commerce—Power of Congress to Prohibit Importation of Foreign Articles. Weber vs. Freed. (United States, December 13, 1915.

239 U. S. 325.) Congress has power to prohibit the importation of foreign articles including pictorial representations of prize fights designed for public exhibition. The fact that exhibitions of pictures are under state, and not federal, control does not affect this power of congress.

Indians—Control Over. Williams vs. Johnson. (United States, December 20, 1915. 239 U. S. 414.) Indians are wards of the nation and congress has plenary control over tribal relations and property. This power continues after Indians have been made citizens, and may be exercised as to restrictions upon alienation of real property allotments.

Municipal Corporations—Donation of Municipal Funds to State. City of Sacramento vs. Adams. (California, December 14, 1915. 153 P. 908.) The expenditure of municipal funds for other than strictly municipal purposes, even though for some other public purpose, is not authorized unless the power is clearly and unmistakably conferred on the municipality, but the State may confer such power as to any purpose which is fairly a public purpose, of benefit to the municipality. Under an act of the legislature authorizing a municipality to incur an indebtedness for the purchase of a site suitable for state buildings within the municipality to be donated to the State, the municipality may incur such indebtedness.

Municipal Corporations—Forest Preserve Districts. Perkins vs. Board of Commissioners. (Illinois, February 16, 1916. 111 N. E. 580.) The power of the legislature to create municipal corporations is practically unlimited. It may create any conceivable kind of a corporation it sees fit for the more efficient administration of public affairs and endow such corporation and its officers with such powers and functions as it deems necessary. For this purpose it may provide for the organization of corporations which embrace territory situated wholly within or partly within and partly without the boundaries of another municipal corporation. The formation of forest preserve districts whose boundaries may be coextensive with those of another municipality or which may embrace two or more municipalities for the acquisition, preservation and scientific care of forests, is entirely within the legislative power.

Municipal Corporations—Optional Charters. Cunningham vs. Rockwood. (Massachusetts, February 10, 1916. 111 N. E. 409.) The

plenary power given by the Constitution to the general court to constitute city governments is not violated by a statute establishing four different types of city charters, one type of which cities may select for themselves as its voters decide to be best adapted to its needs, in place of the enactment of a special act whenever the city's government is to be changed. The constitutional provision does not apply after the change from town to city has once been made.

Mattresses—Use of Secondhand Material. People vs. Weiner. (Illinois, December 22, 1915. 110 N. E. 870.) An act prohibiting the use of secondhand material in making mattresses, quilts, or bed comforters, is void as depriving citizens of the lawful use of their property in a manner not injurious to others, since, while it would be proper to require that material be free from germs, and possible danger to health, the absolute prohibition of a useful industry where the danger can be dealt with by regulation is not justified.

Primary Elections—Political Party—Second Choice—Fees. Kelso vs. Cook. (Indiana, January 5, 1916. 110 N.E. 987.) The requirement of an oath of party allegiance from a challenged voter by the primary election law is not violative of the constitutional provision for a secret ballot, since the statute does not require the challenged voter to state specifically for whom he previously voted, but merely that he voted for a majority of the party's candidates. A political party is an association of voters believing in certain principles of government, formed to urge the adoption and execution of such principles in governmental affairs through officers of like beliefs. Provision for second choice voting in the primary election law does not violate a constitutional contemplation of a single vote by each elector, since primary elections are not contemplated by the constitutional provisions. A provision in such law requiring candidates to pay a fee equal to one per cent of the annual salary of the offices sought, is violative of the constitutional provision that the general assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens.

Public Utility—Public Use. State Public Utilities Commission vs. Bethany Mutual Telephone Association. (Illinois, October 27, 1915. 110 N.E. 334.) Aside from the statutory definition, the term public utility implies a public use, carrying with it the duty to serve the public and treat all persons alike, without discrimination, and it precludes the idea of service which is private in its nature, whether for the benefit

and advantage of a few or of many. The words public use mean of or belonging to the people at large open to all the people to the extent that its capacity may admit of the public use. The public utilities commission has no jurisdiction over a mutual telephone association which under its charter has no authority to engage in public telephone service, or to devote its property to public use, but is organized for the private use of its members only; and not for profit. The number of members of such an association is immaterial.

Pure Food—Misbranding. Ex parte De Klotz. (Nebraska, December 3, 1915. 155 N.W. 240.) The prohibition against the misbranding of food packages, does not prohibit placing in a food package advertising matter in the form of a coupon exchangeable for certain articles and which has no appreciable weight and does not affect the healthfulness of the food.

Religious Liberty—Religious Instruction in Schools. State vs. District Board of Joint School Dist. No. 6. (Wisconsin, February 22, 1916. 156 N.W. 477.) Where a school board held graduating exercises in churches, and allowed various clergymen to deliver nonsectarian prayers at such exercises, but no compensation was paid for the use of the churches, or for the prayers, parents of school children, though violently opposed to the churches in the which exercises were held, were not deprived of their constitutional religious liberty. Nor did such action by the school board violate the constitutional inhibition against sectarian instruction in public schools.

Shipping—Release from Charter. The Athanasios. (United States, February 15, 1915. 228 Fed. 558.) A Greek vessel, chartered in a port of the United States by a charter party containing the usual exemption from liability for loss or damage occasioned by arrest and restraint of princes, rulers, or people, is released from the obligations of her charter, where before proceeding she is requisitioned by the kingdom of Greece for government service. It would seem that a court of admiralty of the United States should for political reasons refuse to entertain a suit by a Canadian corporation against a Greek vessel requisitioned for use by the Greek government.

Statutes—Construction. People vs. Chicago Railways Company. (Illinois, October 27, 1915. 110 N.E. 386.) The rule that in the interpretation and construction of a statute the intention of the legisla-

ture is to be ascertained and given effect, does not permit the courts to consider statements made by the author of a bill or by those interested in its passage, or by the members of the legislature adopting the bill, showing the meaning or effect of the language used in the bill as understood by the person or persons making such statements.

Taxation—Exemption from. State vs. Baltimore and Ohio Railroad Company. (Maryland, January 13, 1916. 96 A. 636.) A charter granted to a railroad company prior to the constitutional provision of 1851 prohibiting the granting of irrevocable and unamendable charters and which exempted the railroad from taxation, is a contract between the State and the railroad company within the protection of the United States Constitution, Art 1, §10, and the immunity from taxation can only be modified by the State with the assent of the company.

Trial by Jury—Necessity for Presiding Judge. Freeman vs. United States. (United States, August 25, 1915. 227 Fed. 732.) Trial by jury in the primary and usual sense of the term at the common law and in the American constitutions, is not merely a trial by a jury of twelve men before an officer vested with authority to cause them to be summoned and impaneled, but it is a trial by a jury of twelve men, in the presence and under the superintendence of a judge empowered to instruct them on the law and to advise them on the facts, and to set aside their verdict if in his opinion it is against the law or the evidence. The continuous presence of the judge is essential, and another judge cannot lawfully be substituted for the one before whom the trial was commenced, during its progress.

Workmen's Compensation—Municipalities as Employers. Wood vs. City of Detroit. (Michigan, December 21, 1915. 155 N.W. 592.) The provisions of the workmen's compensation act, providing that certain municipal corporations shall constitute employers subject to the provisions of the act, does not violate the home rule provisions of the constitution, since the compensation act in its application to municipalities involves no right of local self-government, but declares a new public purpose for which taxes may be levied by the municipality. The provision giving private employers an election whether or not to accept the act while imposing it upon municipal employers does not deny equal protection of the laws, since the imposition upon municipalities works no invasion of private rights, as the burden assumed by such corporations is distributed on the community subject to be taxed.

BOOK REVIEWS

The Monroe Doctrine: An Interpretation. By ALBERT BUSHNELL HART. (Boston: Little, Brown and Company. 1916. Pp. xiv, 445.

This volume is divided into seven parts with the following heads: The Original Monroe Doctrine, 1775-1826; Variations of the Monroe Doctrine, 1827-1869; The American Doctrine, 1869-1915; Present-Day Doctrines; Present World Conditions; Doctrine of Permanent Interest; and Materials on the Monroe Doctrine. It is the fullest, most critical, and most readable account of the Monroe Doctrine in all its important phases that has so far been written by an American. The recent work of Dr. Herbert Kraus, *Die Monroedoktrin*, exceeds it somewhat in length.

Professor Hart not only has positive views on most phases of the Monroe Doctrine, but he has a definite thesis to maintain. The thesis which he elaborates in this volume was first set forth by him in an article in the *American Historical Review* for October, 1901, entitled, "The Monroe Doctrine and the Doctrine of Permanent Interest." The author's contention is in brief that the theory of the two spheres of Europe and America no longer holds, and that the Monroe Doctrine fails to justify the most important phase of our Latin-American policy, namely, our recent advance into the Caribbean Sea. He would therefore substitute for the Monroe Doctrine the Doctrine of Permanent Interest, or more briefly the American Doctrine, that is, the doctrine that the United States has the right to safeguard its interests in this quarter of the globe just as other great powers act in defense of their vital interests elsewhere. In fact, he claims that this is what the Monroe Doctrine has practically meant since 1869, and his view is that whatever action we may decide to take as the leading American power should be based avowedly on our practical interests at the time rather than on such a vague and indefinite abstraction as he considers the Monroe Doctrine to be. The extension of American supremacy over Cuba, Porto Rico, the Dominican Republic, Haiti, Nicaragua, and Panama he considers inconsistent with the Monroe Doctrine. He

apparently overlooks the fact that the Monroe Doctrine has never been acknowledged by the United States as in any sense a self-denying declaration. In fact, during the first half of the nineteenth century we repeatedly refused to bind ourselves not to annex Cuba.

After quoting at length from the address delivered by Senator Root on the Monroe Doctrine before the American Society of International Law, April 14, 1914, Professor Hart says on page 238: "Root's Doctrine does not cover the whole ground, nor does it explain or justify the various steps taken by the United States in the direction of coercing or weakening other American countries. It may stand as the last word spoken by an expert in international law and a trained American statesman. Its spirit comes nearer than any similar systematic presentation of the doctrine to a recognition of the duties of the United States. Nevertheless, the accuracy of the Root doctrine must be tested by the actual relations of the United States to the rest of America." Again on page 242 he says: "The simplest form of the doctrine is Root's nervous phrase, 'That the safety of the United States demands that American territory shall remain American,' but even that reduced form does not answer the question whether annexations by the United States are within the American Doctrine, against the American Doctrine, or outside the American Doctrine." These two passages show conclusively that Professor Hart is trying to find a doctrine that will explain everything in American diplomacy. As a matter of fact, the Monroe Doctrine defines merely one phase of our attitude toward Latin America, namely, our attitude toward European intervention in Latin America. Our attitude toward Latin America on other questions is not necessarily governed by the Monroe Doctrine. The Spanish War, for instance, resulted in the annexation of Porto Rico and in the establishment of a protectorate over Cuba, yet the Monroe Doctrine was not directly involved either in the causes of the war or in the results.

In his account of the history of the doctrine Professor Hart is more interested in setting forth the variations from the original declaration than in showing the development of the policy first announced by Monroe, and he appears to attach more importance to the spoken and written words of American statesmen than to the underlying significance of their acts. To many minds, certainly to the majority of men in public life, the Monroe Doctrine appears to have had a fairly consistent and logical growth, notwithstanding the occasional vagaries of those who have been charged with the formulation of our foreign policy. Professor Hart remarks that the Monroe Doctrine is "not a document or

a policy but a national frame of mind." Many of his readers will doubtless differ from his point of view and from his conclusions, but they cannot fail to be interested in his discussion.

The book is carefully written and printed, and it contains apparently very few errors. For the word "neutrality" near the top of page 33 should be substituted the word "belligerency." The statement on page 134 in reference to the "Ostend manifesto" that Buchanan, Soulé, and Mason were authorized to suggest a policy with regard to Cuba is hardly accurate. On page 153 the reader is left under the impression that the concentration of American troops on the Texas frontier in 1865 was the sole cause of the withdrawal of the French troops from Mexico and the overthrow of Maximilian's government. As Bigelow's autobiography shows, Louis Napoleon was more influenced by the complications likely to arise out of the war between Austria and Prussia than by the situation in America. Professor Hart's statement on page 204 that Olney's position on the Venezuelan boundary dispute would have had more force if he had stood out boldly on the principle of "permanent national interest" and that "Monroe added no strength to his position" may well be doubted. His statement on page 293 that Hay's open-door policy "was accepted with brief delay by all the powers concerned, including Germany," though generally believed by Americans, is not borne out by the documents. As a matter of fact, the replies of several of the powers were evasive, and no agreement embodying the terms proposed by Hay was ever signed by any of them. A noticeable omission from the book is the Roosevelt-Holleben interview of 1902 with reference to Venezuela, recently brought to light by Thayer, whose life of Hay is endorsed without reservation by Colonel Roosevelt in the *Harvard Graduates' Magazine* for January, 1916.

Notwithstanding Professor Hart's sometimes drastic criticisms of the Monroe Doctrine and its applications, he appears to be a staunch upholder of the policy, although he would prefer to make it more inclusive and to call it simply the American Doctrine. This is shown by the following statement: "When everything has been said that can be said about the changes in naval warfare, about the growing ease of sending a landing force to a long and undefended coast, and about the great distance of South America from every part of the United States—the fact remains that the present distribution of nations in America is not threatening to our peace or welfare; and that a group of European colonies would be a standing menace."

JOHN H. LATANÉ.

The Challenge of the Future: A Study in American Foreign Policy. By ROLAND G. USHER. (Boston and New York: Houghton Mifflin Company. 1916. Pp. xxi, 350.)

This volume, like its predecessors, *Pan-Germanism and Pan-Americanism*, presents a picture in bold contrasts of black and white, while, as the author frankly states in the preface, "a true picture would be a rather confused blur of different shades of gray, which melt into one another with here a shadow and there a streak of white." He justifies his method of treatment on the plea of clearness and emphasis. In the present volume, as in *Pan-Germanism*, the author displays great facility in gathering together the somewhat nebulous ideas that are floating around in the popular mind and giving them definite form and concrete expression. He possesses a brilliancy and lucidity of style which carries the reader forward with great ease and rapidity. Every striking idea or form of expression that comes to the author is set down in utter disregard of its conflict with other ideas and statements already set forth. The task of reconciling them would involve the ruthless sacrifice of high-sounding phrases and glittering generalities, and such a sacrifice the author is apparently incapable of making. He inserts a footnote occasionally where the inconsistency is too obvious to tell the reader that the one statement was made on one hypothesis and the other on another. To what he calls "academic accuracy" he has not thought it worth while to make any concessions.

Chapter 10 of *Pan-Germanism* filled students of American diplomacy with amazement and destroyed all faith in the trustworthiness of the secret sources of information on which Professor Usher so often intimates that his conclusions are based. In that chapter he claimed that the United States, England, and France had in 1897 arrived at a secret agreement which amounted to an alliance. Senator Lodge was quick to point out the absurdity of such a statement. In his volume on *Pan-Americanism* Professor Usher's conclusions were in brief that we would either have to abandon the Monroe Doctrine and other cherished policies or fight the victor in the European War. He therefore solemnly warned the American people to forego their present aims and ambitions or to prepare for the inevitable conflict. His readers were left in uncertainty as to which course he favored.

In the present volume he advances a new solution. He opposes armaments on the ground that it is impossible to distinguish between defensive and offensive preparations, and he advocates four lines of

action: (1) an alliance with England (ignoring his earlier assertion that such an alliance had existed since 1897), (2) the abandonment of the Pacific to Japan, (3) the renunciation of the Monroe Doctrine so far as South America is concerned, and (4) the immediate policing and ultimate annexation of Mexico, Central America, and portions of the West Indies. This, we are solemnly informed on the cover, is "the first attempt to formulate an American foreign policy that will meet new conditions and save us the burden of huge armaments!"

JOHN H. LATANÉ.

A History of England and the British Empire. In four volumes. Vol. IV, 1802-1914. By ARTHUR D. INNES. (New York: The Macmillan Company. Pp. xxxv, 604. With maps.

Among general histories Mr. Innes's book is likely to be of singular usefulness because he has so fully implemented his title *A History of England and the British Empire*. The period comprised is from the peace of Amiens to the beginning of the war. The new era in British colonial history—the era that began with the American Revolution—falls in the main within this period; and there can scarcely be a development of importance in the history of the oversea dominions, or of India that has not adequate treatment in Mr. Innes's pages. There are aspects of colonial development where a little more detail might seem desirable. It might have been well, for instance, if there had been some amplification of what responsible government has meant for Canada; of what Canada has gained in constitutional power and liberty in the three-quarters of a century since the united provinces of Ontario and Quebec secured responsible government through the liberality with which Sydenham and Elgin, as governor-generals, interpreted the act of union of 1840. But when a reader feels a desire for a little amplification here and there, he also realizes that Mr. Innes is writing the history of England as well as of the oversea dominions, the crown colonies and India since 1802. He appreciates that while no distinction of style characterizes Mr. Innes's work, and while occasional errors in dates and statements have crept into the book, the history is well-planned and well-balanced. Going through it from cover to cover, if the volume were kept within its present limits—562 pages—the only chapters that could be eliminated without loss to make room for any amplifications, are those assigned to literature. The attention that literature receives in any general history is seldom satisfactory. Literary surveys even in the best of general histories are scrappy and incom-

plete. Mr. Innes's survey certainly comes under this description; for it consists of little more than an enumeration of the principal writers and books of the century under review.

Mr. Innes is obviously at his best when he is writing of politics and of industry; and as has been indicated his book stands out among general histories by reason of the comprehensiveness of his treatment of the oversea dominions and India. In his handling of colonial policy, he brings out with much clearness the old conception of British statesmen with regard to what have since developed into the oversea dominions. "At that time," he writes, in describing the formation of the Disraeli administration of 1874, "the British public in general, and the great majority of politicians, took it for granted that colonial policy meant educating the colonies or allowing them to educate themselves up to such a standard of political organization that they could set up for themselves as independent states whenever they might elect to do so, and that they were rather to be encouraged to take such a step, so as to reduce the world-wide responsibilities of the British Empire." Carnarvon, who was secretary for the colonies in the Disraeli administration of 1874-1880 was the first statesman to develop the new imperial idea. He looked forward to the day when the colonies should form a group of sister states, all self-governing, but united in one imperial family. Carnarvon, with the help of Froude, worked towards this ideal in South Africa. He was anxious for a union like that which came in 1908. But in 1877 there was no active interest in England concerning the oversea dominions. England was indifferent to Carnarvon's scheme for a South African federation. It was not acceptable, moreover, to Cape Colony and Natal. Consequently the scheme failed; and until Chamberlain was installed at the colonial office in 1895 England had no other colonial secretary who was animated by Carnarvon's conception of colonial policy or fired with zeal for carrying such a policy into effect.

Except as regards municipal life England of the period immediately preceding the great European war was largely the creation of the years between the second reform act and 1914. Mr. Innes realizes this, and devotes nearly two-fifths of his book to these forty-seven years. His survey of politics and legislation is particularly good, especially after the third extension of the franchise in 1884-1885, and the division in 1886 in the Liberal party on Gladstone's first home rule bill. Even before the Liberals were returned to power in 1906 there was some noteworthy legislation on liberal—almost democratic—lines; and Mr.

Innes shows how much of this was due to the liberalizing influence which Chamberlain exercised on the Unionist governments of 1895-1905. In describing the legislation and the attempts at legislation of the Liberal governments of 1880-1885 and 1892-1895, Mr. Innes also emphasizes the new conception, developed by Salisbury, of the functions and powers of the house of lords.

His narrative of the abortive Bayard-Chamberlain treaty of 1888 is one of the places where a little more detail is desirable—enough to establish his statements that “left to themselves the United States threatened a commercial war with Canada which would have damaged them more than the Canadians;” and that a treaty was negotiated that “virtually ignored the Canadian claims, and conceded everything to the United States, although there was a general conviction that the case for Canada was very much the stronger of the two.” Mr. Innes inferentially attributes the alleged ignoring of the claims of Canada to Chamberlain, who “had not yet come to be regarded as the creator and foremost champion of the imperial idea.” Whatever basis there may be for the suggestion that Chamberlain was not vigilant for the interests of Canada, Mr. Innes overlooks the fact that the late Sir Charles Tupper was Chamberlain’s associate at Washington in negotiating the abortive fisheries treaty of 1888; and there certainly was no statesman in any of the oversea dominions who was more possessed of the imperial idea than Tupper, nor with the exception of Galt, was there any Canadian statesman more everlastingly vigilant for Canadian interests, or more aggressive in asserting them, whether the case concerned Great Britain or the United States. Tupper was satisfied with the treaty; for on February 28, 1888, while the treaty was still pending in the senate at Washington, he assured Chamberlain that “we have much reason to congratulate ourselves and those we represent upon the result of our efforts.” “The time is not far distant,” added Tupper, “when the great services you have rendered to Canada and to the empire will be freely recognized and freely expressed.”

Ireland’s many agitations from the days of O’Connell to the government of Ireland Act of 1912-1914 are all well described by Mr. Innes. But all there is about Scotland in these 562 pages could be brought within a single page. In the 114 years from the beginning of the nineteenth century to the outbreak of the great war, Scotland was freed of the serfdom at its coal mines and salt pans that dated back to the seventeenth century. It emerged from a parliamentary system to which the word representation could not properly be applied. Its era of rule by a boss came to an end. Its municipal corporations were reformed.

Its ancient convention of royal burghs took on new life and usefulness. It developed a school of municipal administrators not second even to those of England since 1835. It developed the greatest centers of steel shipbuilding in the world. It often gave the Whigs and Liberals their majorities from 1832 to 1886. It provided the house of commons at least with one speaker. It developed one of the best newspaper presses in the English-speaking world; and not to lengthen the catalogue of achievements, Scotland between 1886 and 1914 gave Great Britain three premiers. The writer of this note is not a Scotsman; but he looks forward to the time when Scotland will be fairly regarded by English historians as of the British Empire.

E. P.

Law and Order in Industry. By JULIUS HENRY COHEN. (New York: The Macmillan Company. 1916. Pp. xviii, 292.)

The agreement or "protocol" made in 1910 between the New York local unions of the International Ladies Garment Workers' Union and the Cloak, Suit and Skirt Manufacturers' Protective Association has received a large amount of attention. Exhaustive studies of the working of the agreement and of the peculiar problems of the industry have been published by the Bureau of Labor Statistics, and numerous magazine articles have discussed the merits of the plan. Mr. Cohen's book adds to the literature of the subject a connected history of the agreement interspersed with many interesting digressions on the larger questions involved in the relations between organized labor and capital.

Mr. Cohen has been counsel for the manufacturers during the entire life of the agreement, and is intimately acquainted with the events of which he writes. He has not, however, added much to the available information concerning the protocol. The chief interest of the book to students of trade agreements will be found, therefore, in Mr. Cohen's argument in favor of judicial determination as a means of settling trade questions. As is well known, the protocol differs from nearly all other important trade agreements in providing for a standing arbitration board. Most students of the subject have regarded the board as a temporary device, necessary, perhaps, in view of the extraordinary conditions in the trade, but to be dispensed with at the earliest possible moment. Mr. Cohen on the contrary, believes that the standing board represents an important advance in the means of settling trade disputes. He argues that it is only by such a device that "moral issues" such as the right of discharge can be permanently disposed of.

GEORGE E. BARNETT.

The Recognition Policy of the United States. By JULIUS GOEBEL, JR. (New York: Columbia University. 1915. Pp. 228.)

Without showing marked evidence of original work, this volume presents the most elaborate discussion yet given of the policy of the United States with regard to the recognition of new states and of new governments—the recognition of belligerency is not treated.

Of the two chapters forming the first or introductory part of the book, the first outlines the accepted account of the development of the principle of legitimacy through its dynastic and monarchical stages to the point where in international law it develops into the principle of *de jure* government. The second chapter, in which the author, closely identifying recognition with the *de facto* theory, holds that “the recognition of governments is purely a formality” (p. 65), and that the recognition of states “is neither a right of the new state nor a free act on the part of the state which grants it” (p. 55) but is “inevitable” (p. 57), is a statement of modern German theory, as developed in particular by Jellinek. This chapter is, indeed, considerably marred by the forms of expression which are far more German than English. Such phrases as “the normative force which is contained in the purely factual” (p. 47) and “It is precisely this act which produces a legal community from the purely political *de facto*” (p. 58) are English translations of German rather than original English composition.

The second part treats of recognition in its application to this country during its establishment; in its application by us a little later to France, then to the revolted Spanish colonies, to Texas and to Hungary; in its application to a part of this country once more during our Civil War; and finally its application by us again since that war. With the exception of the civil war period, during which the author notes a reversion toward legitimacy, the principle of recognition of *de facto* authorities was slowly developed and finally established in our policy.

The fact cannot but be the occasion of surprise that the author does not in any way indicate indebtedness to F. L. Paxson's *Independence of South America: A Study in Recognition and Foreign Policy*. This book is listed in the author's extensive bibliography at the end, but no reference whatever is made to it. The three central chapters of the present book follow so closely the lines laid down by Dr. Paxson in his work from original materials, that if this work was familiar to the author, it is hardly conceivable that it was not of use to him.

ROBERT T. CRANE.

The Industrial and Commercial Schools of the United States and Germany. A Comparative Study. By PROF. FREDERICK W. ROMAN. (New York and London: G. P. Putnam's Sons. 1915. Pp. xv, 382.)

During a period that is receiving many additions to the literature on industrial or vocational education, it is helpful to have at hand this volume by Professor Roman. He presents an extended account of the early appearance, organization and administration, and growth of the schools in Germany and in the United States which have supplemented the regular system of schools to the end of improving the industrial efficiency and economic welfare of those youths who do not pass on to higher education. By various means of study and inquiry, including careful examination of widely scattered literature, public documents, reports and announcements, personal visitation of schools, especially in Germany, and correspondence, the author has collected a large amount of special educational material. To this he adds economic and political, as well as educational, analyses which greatly increase the value of his labors to his readers.

The volume is an English adaptation, with "certain material additions," of the results gathered during an extended period of study and observation in Germany, and published, (apparently as a thesis), in 1910. Data of various German schools as recent as 1913, and of American schools as recent as 1914 are included. Of the twenty-one chapters, seven are given to the German continuation schools before and during the Empire; ten to the variety of schools of this general type in the United States, including those established by endowment, state aid and municipal appropriation, charity, and other agencies; four to a comparison of the outstanding features of these developments in the two countries, with special reference to the economic and political problems involved in the control and organization of vocational schools.

Readers of this journal are interested in the author's conclusion, which relates to the political function involved in this newer form of education. In modern states education is regarded as a distinct function of government. The legal control over, and maintenance of, "public" schools is an accepted practice. In the recent development of vocational education in the United States, due in part to a certain popular dissatisfaction with the established order of school work, the political issue raised centers in the question, whether, or not, we should have a dual system of educational control established by legislation:

one system to be confined to the historic type of schools, the other to assume control over the new industrial or vocational schools, each system to be administered by a board independent of the other.

Professor Roman shows (pp. 340 ff) the error involved in the contention for a dual system by those Americans who cite, in support of their plea, alleged dual systems of educational control in the states of the German Empire, and concludes that the educational function of government in our states can be more efficiently discharged by a single school board, which shall include in its administrative duties the supervision of the coming vocational and continuation schools. The forms of government in Germany and in the United States are contrasted also with reference to their respective efficiency in making those educational adjustments which result in promoting the economic welfare of the two nations.

EDWARD F. BUCHNER.

Das Englische Prisenrecht. By CHARLES HENRY HUBERICH.
(Berlin: Carl Heymanns. 1915. Pp. viii, 135.)

A distinguished lawyer of wide repute who has practised in this and other countries as well as Germany, once professor of law in an American university, Dr. Huberich is extraordinarily fitted to fulfill the double task he has undertaken of writing an account of English prize law in German and an account of German prize law in English.

The present volume represents the first half of this task. It is a treatise on English prize law as developed up to the end of April, 1915 with special reference to the laws and to the decisions of British and colonial prize courts issued since the beginning of the European war. The development of the English rules through legislation and decree consists chiefly in the extension of the definition of contraband and in its stricter penalization, modified, however, to a note-worthy degree by exemptions, by special arrangements, and by markedly different treatment of Germany on the one hand and of Austria-Hungary and Turkey on the other. The reports of the decisions of the British colonial courts in Australia, India, South Africa and Egypt are particularly interesting and useful. These relate especially to the Suez convention, the status of Egypt, the presumption as to knowledge of the outbreak of hostilities by a ship equipped with wireless, to neutral property in use on board an enemy ship, to goods unladen but within the port limits, and to hostile goods on a British ship.

The value of the work is greatly heightened by the fact that the au-

thor has treated all questions from a purely legal point of view without permitting himself to enter the field of political discussion. The result is the production of a critical but apparently thoroughly impartial piece of work, in which the German bias that might possibly be anticipated is entirely lacking.

ROBERT T. CRANE.

Comparative Free Government. By JESSE MACY and JOHN W. GANNAWAY. (New York: The Macmillan Company. 1915. Pp. xviii, 754.)

This book by Professors Macy and Gannaway, of Grinnell College, is one of the series of *Social Science Text-Books* edited by Prof. Richard T. Ely, of the University of Wisconsin. By far the larger part of the book (549 pages) is devoted to American and English government. Forty-two pages are devoted to France, twenty-two to Germany, thirty-two to Switzerland, seven to the smaller states of Europe, and thirty-three to South America. The book closes with a chapter of ten pages on "Federation and Democracy."

The evident purpose of the authors has been to prepare a text-book for the college student just beginning the study of political science. They say in the preface: "The comparative study of government is particularly valuable for the student just beginning his work in political science." And again: "The authors of this book are firm in the belief that the basic course in political science should be comparative in nature."

Many instructors will, no doubt, prefer to begin their work in political science with a course based on a book covering the general principle of the subject, but a course based on a book "comparative in nature" would have some obvious advantages. It would be more concrete and more definitely informing. It is also probably true that the laws of political science would reveal themselves just as effectively in an indirect way.

On the whole, the authors have done their work well. The exposition is good and the material is well organized. The concrete analysis of governmental forms, however, is rather more satisfactory than the theory or the historical background.

The book impresses one at times as being somewhat thin and insubstantial. Professor Ogg's book on *The Governments of Modern Europe* is a magazine of facts, while the present volume sometimes tends in

the opposite direction—a good discussion of the general principles without an adequate substratum of fact.

The treatment of American and English government is adequate for a book of this character, but the chapter on the government of the German Empire is rather sketchy and unsatisfactory. The treatment of the minor states of Europe is wholly inadequate. It is to be presumed, however, that the authors thought it advisable to give greater space to those governments which had made the most noteworthy advances in democracy.

The book is up to date in every respect and treats of many phases of recent development, such as the Federal Trade Commission of 1915. It is remarkable how soon a book on government gets out of date. The difference in this respect between the present volume and the latest edition of Bryce's *American Commonwealth*, for example, is marked.

As might be expected not all of the conclusions of the book will be accepted by the critics. Not every one would agree for example, that the electoral college was an "invention" of the constitutional convention (page 14). The proofreading has been remarkably well done but there is a typographical error occasionally, such as Dickenson for Dickinson (page 458), and Lecky for Lecky (page 497).

THOMAS F. MORAN.

Bibliography of Municipal Government. By WILLIAM BENNETT MUNRO. (Cambridge: Harvard University Press. 1915. Pp. ix, 416.)

Not since the work of R. C. Brooks of which the last edition was published in 1901 has there previously appeared a comprehensive bibliography in the special field of municipal government. During the last fifteen years, the only bibliographical sources available beyond short lists appended to text-books have been compiled from year to year by periodicals devoted entirely or in part to municipal topics, and during the past two or three years, the Public Affairs Information Service. The former of these sources have not been sufficiently complete; and the latter, being exhaustive, offers none of the advantages of discriminating selection.

To any one who is familiar with the peculiar difficulty of handling so huge a literature as that on municipal affairs, it is the selective, rather than the exhaustive, quality of such a work which will be most

appreciated. The judgment with which choice has been made of references is fully confirmed by comparison with lists on specific subjects that have been most carefully prepared and tested by actual use in a municipal reference bureau. The materials included have been arranged in such manner as to be easily distinguishable for use by the general reader, the student or the specialist.

In spite of the care with which materials have been rejected, some 5000 titles are included—twice the number included in the less discriminating work of Brooks. They cover the whole range of municipal affairs and are so conveniently arranged according to subject, divided and sub-divided, that the exact materials wanted are easily located. Critical notes are often valuable. The work is excellently planned and excellently executed.

ROBERT T. CRANE.

American Municipal Progress. New and Revised Edition. By CHARLES ZUEBLIN. (New York: Macmillan. 1916. Pp. xiv, 522.)

One who has not read the 1902 edition of *American Municipal Progress* will not detect in the new edition those characteristics which prejudice one against the word "revised." This edition contains almost twice as many pages as the former edition. Of the 67 pages of bibliography less than 3 per cent of the entries bear a date as early as 1902, and scarcely any one of the 46 illustrations could have been used at that time. Therefore, this is really a "new" edition.

The author's primary aim in the book is "to indicate to civic and social workers, public officials, and intelligent citizens the vast scope of municipal activity today." In 26 chapters he treats in detail such problems as public utilities; health, police, and fire protection; justice and charity; schools and libraries; parks and city planning; social centers and public recreation; and municipal ownership and administration.

Mr. Zueblin does not discuss the organization of city government systematically but expresses a preference for the commission-manager type accompanied by preferential voting and direct legislation. He feels that the "grafter, the lame duck, the parasite, the tax dodger, the franchise seeker, and the apathetic citizen" are on the defensive and that positive progress is now possible. Therefore, he discusses almost every conceivable present-day municipal problem, usually cit-

ing or describing one or two of the more spectacular examples. For instance, he describes the municipally built and municipally owned water system of Los Angeles which brings its supply 250 miles. "The water is brought by gravity through steel and concrete pipes and conduits, tunneling through mountains for five miles and crossing the Mojave Desert for 150 miles. In addition to providing the city with pure water the enterprise will reclaim more than 200 square miles of land near the city and develop 120,000 horse power of electrical energy. Sir Isaac Newton has been a long time coming into his own."

The book is most readable, as would be expected of a publicist, and the popular style of the book is enhanced by the use of a clever saying which follows each paragraph, such as the above reference to Sir Isaac Newton. It is really an appeal for municipal ownership, and Cleveland which has had its Tom Johnson and three cent carfare is much to the author's liking.

The author is thoroughly progressive, and his enthusiasm for woman suffrage results in this exaggeration: "The women have come off with flying colors in their first mayoralty election in Chicago. As large a proportion of women as of men voted" An exact statement would be that 41 per cent of adult women and 63 per cent of adult men voted for one of the four candidates for mayor. Having covered such a broad field and making use of thousands of detail facts there is naturally a slight inaccuracy here and there. For instance, on page 386 we find, "The city manager is an office created under the old division of functions in Sumter, South Carolina." Does not Mr. Zueblin mean Staunton, Virginia, where for constitutional reasons the manager was added to the bicameral mayor type of government?

The book should be read by every public spirited urban citizen and by every student of municipal government. If a class in *American Municipal Government* has time for only three books an instructor might well use Munro's *Government of American Cities* for the framework of city government, Munro's *Principles and Methods of Municipal Administration* for the Functions, and Zueblin's *American Municipal Progress* for Inspiration.

FRANK ABBOTT MAGRUDER.

The Diplomacy of the Great War. By ARTHUR BULLARD. (The Macmillan Company: New York. 1916. Pp. xii and 344.)

This little volume by a well known novelist and press correspondent at once takes its place among the distinctive additions to war literature

which have recently been published. For a general account of all aspects of the subject the first volume of Allen's *The Great War* has just appeared; for the mobilizations there is Price's *Diplomatic History of the War*; for the immediate causes and the diplomatic correspondence, Headlam's *History of Twelve Days* and Stowell's *Diplomacy of the War of 1914*; for the general and remoter causes of the conflict, Gibbon's *New Map of Europe* in successive editions, and the writing here reviewed.

The book is divided into four parts, of which the first is an account of the history of Europe in the generation preceding. The author begins with the Congress of Berlin, which marks the culmination of Bismarck's policy and success, and the actual beginning of a new era. His description of the Congress, based upon Hanotaux's work, is one of the most striking brief accounts which I have seen. The development of the *Deutschtum*, which he takes back to the mighty stirring of German peoples when they shook off the mastery of Napoleon, is traced through the prosperity and greatness of the nineteenth century, until the author sees in it the dominating force in all recent European politics. Generous pride in their achievements, arrogant belief in their superiority over other peoples, implicit confidence in their future greatness and supremacy, and finally the opposition of non-Teutonic nations to the spread and hegemony of this *Deutschtum*—these are the leading motives in the struggle which culminated in the present disaster. This thesis, which is not new, seems in part to be very true; it has all been explained before in the writing of Usher and the impressive warning of Cramb; but I have not hitherto noticed so plain and explicit statement of it, nor seen it employed so completely as explanation of other events. No one denies that something of it is so, but how far is it so? In the opinion of the reviewer the entire matter is one of the unsolved problems and one of the important problems of contemporary history: to what extent has the *Deutschtum* thus portrayed taken hold of the mass of the German people; how far have the writings of Treitschke, Woltmann, Götte, and Bernhardt influenced the minds of their countrymen or represented that which they believed? Such a problem, perhaps, cannot be solved at present, but hereafter it will be well for some one to make careful study and exhaustive comparison of contemporary German literature with the fugitive writings of her publicists and leaders, and so attempt to give an answer. There is also account of the recovery of France, which I venture to think will one day be reckoned a phenomenon less brilliant, indeed, but almost as noteworthy as the expansion of Germany, together with the history of

the Entente Cordiale, an admirable description of the Algeciras Conference and the Morocco crises, and finally the new grouping of powers in Triple Alliance against Triple Entente. The author confesses that his sympathy is principally with France, but he attempts to be scrupulously fair toward Germany, and frequently condemns the conduct of Germany's opponents.

The second part of the book has to do with the new elements of diplomacy, describing problems and ideals of those who direct foreign policy, and the changing ideas which are coming to influence their work. In the third part the author dealing with the liquidation of the war, abandons the realm of records and facts, to enter the province of those things which have not yet come to pass, but whose absorbing possibility so much leads people to consideration and discussion, that they may well be treated by a competent student of world affairs. He himself confesses that "Part III is pure hypothesis;" but since it contains, even though the problems be unsolved, a clear and thorough presentation of the factors, it is more valuable than such writing frequently is. If the allies of the Entente do not divide in the midst of their task, the author expects them to triumph over their enemies; but he looks to see them confronted with graver problems when they come to share such spoils as they have been able to make. If the Teutonic powers succeed, he prophesies a greater Germany dominating for a time the civilization of the world, and in the end transformed by it.

The fourth and concluding portion deals with present foreign relations of the United States. Complete separation from European affairs was never entirely possible, and recently the American government has been drifting more and more towards participation in the politics of the world, the author making some significant comments on our share in the Conference of Algeciras. In discussing present relations with Great Britain he condemns the arbitrary sea policy of that country with its unconcern for the rights of neutrals, but he sees continuous and greater danger arising from the fundamentally graver offenses committed by Germans. With respect to the military preparedness of the United States he thinks that our peril is magnified by authorities whose professional attitude leads them to take a sombre view; but in my opinion he shows little appreciation of the greatly changed circumstances which cause these critics to believe the danger now so much greater than formerly. Along with other constructive thinkers of the present he has some hope for avoidance of war in the future by increasing the control of democracy over foreign affairs; but

most of the writing on this subject is characterized by generous optimism which gives all too little consideration to the difficulty of reaching its goal. He probably looks into the future better when he sees the hope of days to come rather in a change of spirit until people base even their national relations on sense of justice and not on consciousness of power.

The errors in the volume are inconsequential. The bibliography appended contains a list of books in English, French, and German, interesting and not likely to be known to the general reader. Altogether, I found perusal of these pages enjoyable and instructive.

EDWARD RAYMOND TURNER.

The Operation of the Initiative, Referendum, and Recall in Oregon.

By JAMES D. BARNETT. (New York: The Macmillan Company. 1915. Pp. 295.)

The initiative and referendum have been adopted by American states on the *a priori* theory that the remedy for the faults of democracy is more democracy, and in some states these institutions have now been in operation long enough to provide data for inductive study. The task which Dr. Barnett has essayed is to exhibit the actual working of direct legislation, the character of its product, and the nature of its reactions. No state, with the possible exception of Wisconsin, has played the part of political laboratory more thoroughly than has Oregon; and, because of the reputed vigor, intelligence, and public spirit of its "composite citizens," this western State seems well equipped for the testing of ultra-democratic devices.

Oregon adopted the initiative and referendum in 1902; and in six general elections and one special election its people have voted on sixty constitutional amendments and seventy-six statutes, the largest number of measures, thirty-seven, being submitted in the general election of 1912. "It is no reflection on the intelligence of the voters to say that it is absolutely impossible for them adequately to consider such masses of legislative proposals." A condition most favorable to the multiplying of measures has been the extreme ease of securing signatures to petitions. The "industry" of "petition peddling" has developed, circulators earning from three to ten cents a name; and, according to the author, "there is much evidence for the proposition that 'anybody will sign any kind of a petition.'" For the information of the voter a law of 1907 provides for a state publication known as

"the voters' pamphlet," which to most voters is the only means available for getting a first-hand knowledge of proposed laws; but "probably not one person in hundreds reads the whole of the pamphlet or any considerable part of it even in a cursory manner, much less makes a thorough study of much of its contents." For guidance through the maze of legislative proposals the people depend largely on the advice of newspapers and of organizations, especially of the People's Power League under the leadership of W. S. U'Ren, of whom a newspaper remarks, "In Oregon the state government is divided into four departments—the executive, judicial, legislative and Mr. U'Ren."

Admittedly there are suitable and unsuitable subjects for popular law-making; and it is generally felt that "elemental" propositions, questions of policy or principle, are suitable, while "non-elemental" propositions, administrative or technical questions, are unsuitable. In the author's opinion, something less than half of the measures submitted in Oregon would classify as "elemental" and therefore suitable; while among the large number of "non-elemental" bills several have been highly technical, for example the initiative freight-rate law of 1912, "covering a subject to the consideration of which not even legislatures are adapted, much less the people."

That the Oregon voters are not over-eager to legislate is shown by the facts that on the average only seventy-three per cent of the total vote cast at an election is received by a measure, and that of the one hundred and thirty-six propositions submitted only fifty-one have been adopted. The people apparently take greater interest in matters of policy than in technical questions, and they have generally approved measures for the increase of the "people's power," designed to regulate corporations, or concerned with the administration of the criminal law. On the other hand, they have generally defeated propositions deemed hostile to the "people's rule," involving the expenditure of public money, or inimical to the labor interests, as well as tax reform and local measures. "All the most radical measures were rejected by the voters," but "on the whole it appears that the voters have shown a decidedly progressive attitude." In spite of errors, some ludicrous and some temporarily embarrassing, "it is believed that the results of direct legislation at least compare favorably with those of representative legislation."

The chapter on the recall is a revision of an article which appeared in the REVIEW in 1912.

Dr. Barnett's investigation has been painstaking and unprejudiced,

and his discussion is supplemented by ample foot-notes and appendices. An excessive and sometimes confusing use of quotations is a minor fault of a book which is an interesting and valuable contribution to the study of democratic experimentation.

ARTHUR C. MILLSPAUGH.

Your Congress. By LYNN HAINES. (Washington, D. C.: National Voters' League. 1915. Pp. 160.)

To describe the aims and activities of the National Voters' League is the chief purpose of Mr. Haines' new book. Of these activities the first has been the investigation of the legislative methods of congress. and the formulation of a program of reform. Mr. Haines' analysis of congress at work is of unique value and has been discussed more fully in a previous article,¹ together with the effect upon the house and causes of the more immediate political and parliamentary changes—e.g., rules reform, reduction of size, proportional representation, and the elimination of "pork" and patronage. In addition, the author proposes certain institutional changes, one of which, the executive budget system, requires no comment here. The second, a constitutional amendment to Art. 1, Sec. 5, reducing the number of members whose request is necessary in order to get a roll-call (at present one-fifth of those present), is important but needs little discussion. The establishment of electric voting would leave few non-political reasons against making roll-calls compulsory on all votes.

The significance of the third proposal, a constitutional amendment establishing a unicameral congress, lies not in its novelty, but in the fact that it is advanced by an organization whose character is professedly popular, and whose purpose is professedly practical. In other words, this represents a new step toward making a unicameral congress a political, instead of an academic, issue. Mr. Haines regards this measure as essential to the elimination of political horse-play between the houses, and of the secret, organization-controlled conference committee. A system of joint, instead of separate, standing committees might remedy the latter to a lesser extent.

That the accomplishment of any substantial reforms will require bitter fighting and the persistent pressure of enlightened public opinion is indicated by the flippant frankness and ill-concealed contempt with which Representative Henry of Texas, chairman of the rules committee,

¹ AM. POL. SCIENCE REVIEW, November 1915, p. 696.

treated all proposals to amend the rules for the present Congress.² It is to the stimulation of such a public attitude that the second activity of the League is directed. It intends to give as wide publicity as possible to the current work of congress, by an annual book—*Your Congress* being the first—and by a monthly bulletin, *The Searchlight On Congress*, sent free to all members of the league.³ “The mission of a voters’ league is to learn the exact truth and report it back to the people,” (127)—to shatter the isolation of congress.

That public opinion may be organized as well as informed, it is proposed to establish nonpartisan, “balance of power” groups in the congressional districts, whose aim will be to elect to congress supporters of the league platform, thus forming an independent, “balance of power” group in congress. For effective work the “balance of power” attitude in the view of Mr. Haines, must be applied to legislation as well as to elections.

This “balance of power” idea suggests a commendable weapon for the accomplishment of the reforms supported by the league; the general tenor of the book, however, intimates that nonpartisanship should be further extended. The voters’ league idea originated in Minnesota, where it was influential in securing the present nonpartisan system of elections to the state legislature. Thus is presented the question whether it is desirable to seek the extermination of party-organization. In spite of nonpartisan activity, especially in municipal government, the present tendency seems towards party solidarity—witness the Democratic caucus of today. If, then, party organization can be placed on a sound basis by the elimination of patronage and “pork,” it would seem wiser to seek to mold the party organization to legitimate uses. The distinction between municipal government, where nonpartisanship may be not only desirable but successful, and national government is partly one of degree, but none the less real; for, the larger the unit of government, the more numerous and vital are questions of policy as distinguished from matters of business administration. Also, foreign policy is an additional factor in national government. Furthermore, the strongest objection to party politics in municipal government is that the parties are organized on national and not on municipal issues; but in national government national issues are the proper grounds of difference.

² *Congressional Record*, Vol. 53, No. 1, December 6, 1915.

³ At election time a bulletin giving the record of each congressman on important legislation will be published; Bulletin III, of August, 1914, is an example, part of which is published as an appendix to this book.

It may be argued that, once the spoils of office are eliminated, there will be no bonds of organization; but surely the interests involved in the real party issues of nationalism, regulation of competition, the tariff, and others, are vital enough to sustain an organization to advocate one or another set of policies. Of this the English parties are rough illustrations. With the perfection of a system of collective party-responsibility, and the increase of the nonpartisan electorate, party organizations would appear as rivals for the voters' support on the basis of national issues. The true desiderata thus seem to be, in brief: (1) the refounding of party organizations on the basis of differences of opinion, by the elimination of spoils; (2) the development of a system of party-responsibility in legislation, with the caucus and proportional representation; and (3) the growth of a nonpartisan electorate. Under a system of party-responsibility the election of men unaffiliated with a party organization would be practically impossible; there could be no "balance of power" group within the legislature, unless it were a third party. The real field, then, for nonpartisanship is in the electorate; and there it should be used to enforce collective responsibility upon party organizations, rather than to destroy them.

It is interesting to note that Mr. Haines recognized the inconsistency of urging a responsible executive budget, while advocating a nonpartisan legislature. "Having the President and his Cabinet . . . assume responsibility for public appropriations may seem at variance with the position expressed in reference to partyism. But there is no other proper place for the responsibility to be placed. And this would have a tendency to make parties represent something vital to public welfare—the economies and efficiencies of government on its business side—whereas now their differences are only sham differences" (121). At present, however, because we have so slight a degree of party-responsibility, a "balance of power" group in Congress not only is possible, but should prove valuable as an expedient for attacking the present corrupting bases of party-organization.

In conclusion—though *Your Congress* is popular in tone, it has the meat of original and practical research in it, and with the monthly bulletin serves to keep information up-to-date on the current activities of congress as seen by experienced and impartial observers. Its popular character is in keeping with its purpose of showing to the individual citizen his own interests in efficient government. This book and the league for which it speaks are effective instruments for the much needed reconstruction of the governmental machine, the efficiency of which is

an almost absolute prerequisite to any substantive social reform; they therefore merit the support of all good citizens, whatever their social creed. Let us get a good gun before we quarrel about what we ought to shoot.

WILDER H. HAINES.

Evolution of Law: Select Readings on the Origin and Development of Legal Institutions. Vol. I: Sources of Ancient and Primitive Law. Vol. II: Primitive and Ancient Legal Institutions. Compiled by ALBERT KOCOUREK, professor of jurisprudence in Northwestern University; and JOHN H. WIGMORE, professor of law in Northwestern University. (Boston: Little, Brown, and Company. Pp. xii, 704; xvii, 702.)

This work cannot fail to give a new impulse to the comparative study of the genesis and development of juridical institutions. In the words of the compilers, its "conscious purpose" is to "chart in broad outline the march of humanity in its effort to govern itself and work out its destiny." It affords precious materials for every one of the group of "social sciences." Especially is a thorough study of such materials needed by American lawyers. The book is "offered in the belief that the day is not far distant when the students of the law, the teachers of the law, and the examiners in the law will be dissatisfied with an equipment of knowledge which attempts only the dogmatic side, and neglects the universal, and even the specific historical background of legal institutions."

Doubtless the chief modern crisis in the study jurisprudence—not excepting the influence of Bentham who found English law a "gibberish and left it a science"—was the tremendous stimulus given by Sir Henry Maine, whose first great work, the *Ancient Law*, appeared in 1861. One of the most significant indirect results of Maine's researches was the rise of "institutional history" as the basic division of historical study. According to Maine, the "rudiments of the social state" are known to us "through testimony of three sorts—accounts by contemporary observers of civilization less advanced than their own, the records which particular races have preserved concerning their primitive history, and ancient law." Or these three sources of information, he regards ancient law as the best. He failed to appreciate the true value of the first source, from which, obviously, are derived most of the data of ethnical, anthropological, and sociological investigation, including

much that Maine himself has presented. Since his day, of course, the mass of materials of this sort, as well as of the other kinds, has vastly increased; and from this mass Professors Kocourek and Wigmore have selected with unerring judgment.

Drawn from the translations or other writings of thirty-five experts, the sources constituting the first volume are classified in four parts. Part I, in six chapters, consists of references to ancient and primitive law and institutions found in *General Literature*, including passages from the *Iliad* and *Odyssey*, Plutarch's *Lives*, Caesar's *Commentaries*, Tacitus's *Germania*, and the *Njals Saga*. Part II, also in six chapters, comprises "Modern Observations of Retarded Peoples," by Spencer and Gillen, Murdoch, McGee, Powell, Dugmore, Warner, and Sarbah. A broad basis for Comparative study is laid in the "Ancient and Primitive Laws and Codes" constituting the ten chapters of Part III. In the most authoritative translations here are given, in whole or in part, the "Ancient Accadian Laws," the "Code of Hammurabi," the "Pentateuch," "Edict of Harmhab," "Laws of Gortyn," "Twelve Tables," "Laws of Manu," "Lex Salica," "Aethelbirht's Dooms," and "Laws of Howel Dda." Of unique value and of fascinating interest are the "Ancient and Primitive Legal Transactions" contained in the two chapters of Part IV, pp. 555-702. Here, for example, one may read a "conspiracy case" under Rameses III, a Babylonian "Lawsuit Concerning a Slave," an Egyptian "Marriage Contract," or the "Will of Sennacherib."

The second volume, on "Primitive and Ancient Legal Institutions," consists, not of codes or documents, but of extracts—sometimes whole chapters—from the authoritative works of twenty modern scholars. Its four parts, in thirty-one chapters, offer a wealth of research and interpretation which must surely stimulate further study, particularly university study, in this field.

The "Introduction" contains discussions of the "Evolution of Law" by Josef Kohler; "Ethnological Jurisprudence" by A. H. Post; "Origin of Legal Institutions" by Gabriel Tarde and Paul Frédéric Gerard; "Universal Comparative Law" by Georgio Del Vecchio. Part I is devoted to "Law and the State," including the discussion of "Forms of Social Organization" by J. W. Powell; "Evolution of the State" by Josef Kohler; "Omnipotence of the Ancient State" by Fustel de Coulanges; "Chieftainry and Kingship" by Josef Kohler and Fustel de Coulanges; "Religion and Law," by the same two writers and by Sir Henry Maine; "Evolution of Criminal Law" by Richard R. Cherry,

L. T. Hobhouse, and Ellsworth Ferris; "Forms of Law" and "Methods of the Law's Growth" by Sir Henry Maine.

The general subject of "Persons" is considered in Part II. Here "Kinship" is treated by J. W. Powell; "The Patriarchal Theory" by George Elliott Howard; "Patria Potestas" by Sir Henry Maine; "Women in Primitive Society" and "Women and Marriage under Civilization" by L. T. Hobhouse; and various other subjects by Andrew Lang, Rudolph Sohm, J. W. Powell, and Fustel de Coulanges.

Parts III and IV respectively treat of "Things" and "Procedure." For a great variety of subdivisions, passages are taken from the writings of G. L. Gomme, Levin Goldschmidt, Carl Koehne, Felix Somlo, B. W. Leist, Pol Collinet, Andreas Heusler, Stanley A. Cook, Gustave Glotz, John H. Wigmore, and some of the scholars already mentioned as contributing to the earlier divisions of the work.

The book is printed in handsome style; and the compilers have rendered a distinct service to scholarship in many related fields. The third volume, on "Formative Influences of Legal Development," will be eagerly awaited.

GEORGE ELLIOTT HOWARD.

Imperial Architects. Being an account of proposals in the direction of a closer imperial union, made previous to the opening of the first colonial conference of 1887. By ALFRED LEROY BURT. With an introduction by H. E. Egerton. (Oxford: B. H. Blackwell, 1913. Pp. vii, 228.

Mr. Burt's *Imperial Architects* was written at least a year before the war began; but it is essentially one of a few books on political science published in England before war became the all-absorbing interest to which additional value has accrued in consequence of development brought about by the war. The war was not more than two or three months old before discussion began in England and in the oversea dominions as to the relations of the dominions to Great Britain in the new era that will begin with the end of the war. Closer trade relations are so far being most discussed. There is, however, some discussion of closer political relations than have existed since all the larger colonies were conceded responsible government in the middle period of the nineteenth century. In view of the wider and more insistent discussion of this question which will certainly come at the end of the war, Mr. Burt's *Imperial Architects*—a study of the rebirth of the move-

ment for closer political union—is likely to be of much greater service than he conceived when he first turned his attention to the subject. As far back as 1868, at the time when the Royal Colonial Institute was established in London, the then Duke of Marlborough suggested an imperial council; but it was not until 1887 that representatives of Great Britain and of the oversea dominions met in general conference to discuss the relations existing between Great Britain and the dominions, and to plan for making these relations closer.

The first colonial conference was held in connection with the first jubilee of Queen Victoria about forty years after the united provinces of Ontario and Quebec had blazed the trail for Australia, New Zealand, and South Africa, by securing the right to an executive that must depend for its existence upon a majority of the popularly-elected branch of the local legislature. A new era began with the colonial conference of 1887; and since then there have been three imperial conferences—in 1897, 1907, and 1911 and a fourth was due to meet in 1915. The records of these conferences are now available in official form; and the value of Mr. Burt's book lies in the care with which he has worked out the history of the movement for closer union in the period that lies between the American Revolution and the first colonial conference. The movement began as early as 1822, when John Beverley Robinson, who figures quite prominently in the early history of Ontario, urged as a remedy for conditions then existing in Canada that Ontario and Quebec should be united, and that the united provinces should be represented by one or two members in the House of Commons at Westminster. Robert Lowe, afterwards Lord Sherbrooke, made a similar suggestion with regard to the Australian colonies in 1844, when he was of the legislative council of New South Wales; and in 1852 John Robert Godley, who was associated with Edward Gibbon Wakefield in the colonization of New Zealand, urged an imperial congress. Two years later Joseph Howe, of Nova Scotia, put forward his plan for an imperial union. Labilliere suggested an imperial parliament in 1871; and in 1872, Disraeli, who had lost his fear that oversea possessions might become a millstone about the neck of Great Britain, committed the Conservative party to an imperial policy, and formulated the idea that a representative council should be established in London to bring the colonies into constant and continuous relations with the home government.

Mr. Burt in this way gives a synopsis of practically all the discussions on closer union from 1822 to the meeting of the colonial confer-

ence of 1887—discussions in the reviews as well as in conferences of various kinds; and two facts stand out clearly in his pages. The first is that it was statesmen in the oversea dominions in these sixty-five years who originated most of the proposals for closer political union; and the second is that neither the concession of responsible government to the colonies by Great Britain, nor after 1859 the adoption of protectionist tariffs by Canadian and Australian colonies, weakened in the least the desire of the oversea possessions for closer political relations with Great Britain. This desire for closer political union was contrary to the long accepted conviction in England that with responsible government the colonies would become independent; contrary also to the conviction of statesmen of the Manchester school that the adoption of protectionist policies by the Dominion of Canada and by Victoria must inevitably weaken the tie between the oversea dominions and Great Britain. In a reissue of the book Mr. Burt would add to its value for students of the constitutional history of the empire, by indicating the popular reception that was accorded some of the more important proposals for closer political union that he describes. This would involve considerable research in the files of the British and colonial newspapers of the period from 1822 to 1847, but the results would add much to the usefulness of what is now an extremely timely book.

E. P.

A Manual of the Federal Trade Commission. By RICHARD S. HARVEY and ERNEST W. BRADFORD. (Washington, D. C.: John Byrne and Company. 1916. Pp. 457.)

It may safely be predicted that the Federal Trade Commission Statute of September 26, 1914, will be one of the most important of recent congressional acts. There has of course been as yet little opportunity for its interpretation by the courts, or for the utilization by the commission which is established of its inquisitorial and regulative powers. There is needed, however, such a volume as the one under review in which is traced the legal conditions which led to, and which will largely condition the operation of, the act. This work the authors have done excellently; and, in addition, they have analyzed with care and judgment the act itself, and brought its provisions into relation to the Sherman anti-trust act and the Clayton act. The bearing of these important statutes, considered as parts of a general legislative policy, is discussed in connection with competition in trade, monopolies and combin-

ations to prevent competition, banking, patents, and copyrights, unfair trading in relation to trade marks and trade names, and unfair methods as seen in abuses of corporate control. Practice and procedure before the Federal Trade Commission receive treatment, including suits for injunctions, contempt proceedings, actions for damages, criminal prosecutions, and immunity of witnesses. A special chapter is also devoted to the history and application of the provisions of the Clayton law relating to labor and labor unions. In a series of appendices there is given the text of the Trade Commission, Clayton, and Sherman laws, and other related statutes, and a memorandum, revised to October 15, 1915, of the cases instituted by the United States under the anti-trust laws. The volume, as a whole, thus furnishes a most convenient manual which should be of use not only to practicing lawyers but to academic students of the general problem of the federal regulation of trade and commerce in this country.

The American City. By HENRY C. WRIGHT, First Deputy Commissioner, Department of Public Charities, New York City. (Chicago: A. C. McClurg and Co. 1916. Pp. 178.)

This little volume is the first of the National Social Science Series edited by Frank L. McVey, Ph.D., LL.D., President of the University of North Dakota. Eight other books of this series are now ready and nine are in preparation.

This book is intended for the "general reader rather than the student." The first chapter, which deals with the location and purpose of cities, is very elementary. The second chapter, entitled "Government," describes the powers of cities, gives a bird's eye view of the governments of New York, Chicago, Philadelphia, St. Louis, and Boston, but devotes only four pages to commission and commission-manager governed cities. On page 29 the author states that Boston changed from a bicameral council of eighty-eight members to a single chambered body of nine members in 1901. The correct date of the change is 1909. Chapter III, "Finances of Cities," describes the various kinds of city taxes and how their expenditure is safeguarded. Some significant figures are given in this chapter, e.g., "that the amount of personal property taxes in New York City decreased from \$419,679,395 in 1897, the year of consolidation, to \$325,421,330 in 1913." Incidentally the author says, "The federal government can impose any kind of uniform tax necessary for the purpose of government. In times of

peace these forms are restricted to import duties, internal revenue imports, and income taxes" (p. 53). The federal power is here not only ill defined but incorrectly stated. The federal government cannot impose a uniform export tax. Chapter IV, "Property, Life and Health," is made interesting by telling of such modern projects as high pressure water mains, day camps for children with whooping cough, and floating baths. Chapter V, "Education and Instruction," is too condensed for interest, and the Gary Plan is conspicuous by its absence. Chapter VI, "Municipal Undertakings," is one of the best. This chapter is an impartial account of municipal ownership from a progressive point of view. It contains an interesting table of municipal electric lighting plants, giving the population, power by which current is generated, rates per K. W. hour, number of customers, value of plant, receipts, and profits of 17 plants. Chapter VII, "Housing, Transit, and Location of Factories," and Chapter VIII, "The Effect of City Upon Its Citizens," treat cause and effect and contain ideas well worth considering. In these chapters the author advocates rapid transportation for factory employees at a price less than 5 cents or else rapid and cheap freight and express facilities so that factories might locate in the suburbs where families could have homes, neighbors, a neighborhood, and civic pride.

The views of the book are conservatively progressive, and it should be read by every urban dweller who does not have the time or price for a larger work, such as Zueblin's *American Municipal Progress*.

FRANK ABBOTT MAGRUDER.

The Diplomacy of the War of 1812. By FRANK A. UPDYKE, Ph.D., Ira Allen Eastman Professor of Political Science, Dartmouth College, The Albert Shaw Lectures on Diplomatic History, 1914. (Baltimore: The Johns Hopkins Press, 1915. Pp. 494.)

The centennial of peace between Great Britain and the United States has produced a number of books upon Anglo-American relations. No more fitting contribution to such literature could be suggested than a careful and scholarly inquiry into the diplomacy which produced the Peace of Ghent. Such a book Professor Updyke has given us. While it is timely, it was not written, as is so often the case with timely books, upon the spur of the occasion. Throughout there are evidences of leisurely and thorough investigation. If these are not dressed up in a fascinating literary style, it must be remembered that the period has

been treated by one who is not only a great historian but a master of trenchant prose style. All who follow Henry Adams are apt to suffer by comparison, and comparisons are odious. Professor Updyke has aimed to give a careful, not to say cautious, presentation based upon first-hand investigation of a great body of source materials. The department of state and foreign office archives and the unpublished letters of Jonathan Russell have added much to what was to be gleaned from the printed materials easily accessible. The papers of Bayard since printed, and of J. Q. Adams, now in course of publication, were seemingly not used, though it would appear that, had they been, not much change in the general outline would have been made.

The volume divides itself into three parts—the first having to do with the questions of impressment and neutral trade down to the outbreak of the war; the second, the diplomacy of the War of 1912—such it strictly was, for in that egregious war there were diplomatic relations of a sort between the belligerents from the beginning almost to the end of the conflict; and the third, the ultimate settlement of the various questions to the solution of which the Treaty of Ghent only gave direction. The author stresses “impressment as one of the principal causes for which the war was declared” (p. 60). That it was one of the principal occasions for war may be conceded (perhaps this is what is meant by stating that it gave the “sentimental basis” for the war, p. 61), but the causes of the war were certainly much more deeply laid than the questions of impressment, or even of neutral trade. The position of the United States in the present world-war vastly illuminates its position from 1793 to 1815. We have learned, too, to distinguish between the causes of, and the occasions for, war. During the Napoleonic era the United States might have kept out of the war altogether by abandoning its trusteeship of neutral rights and duties, or she might have sided, as she so nearly did in 1798, with Great Britain against France. Instead, with what seems to us today as a strangely provincial attitude, we sided with Cæsarism and despotic militarism against free institutions and constitutional liberty, overbearing and exasperating as the instruments of the latter certainly were.

The second part of the book centers upon the negotiations at Ghent, and here the author has ploughed most deeply. The negotiations were painfully tedious, and it is not easy to make the narrative of them altogether interesting. After all, what most attracts one is the conflict of personalities engaged on both sides, for no more varied assortment of diplomatic agents ever sat about a table. Brilliant and able

as the American commissioners were, the treaty was after all shaped by events quite outside their control, for the principal feature of it, the *status quo ante bellum*, was adopted by the British Cabinet because of "the unsatisfactory conditions of the negotiations at Vienna, and by reason of the financial difficulties in Great Britain" (p. 312). What might have been had Wellington accepted the appointment to command the British forces in the autumn of 1814 is beyond conjecture. Andrew Jackson might not have been the hero of New Orleans and a Pakenham might have written a different page at Waterloo. The reception of the treaty in England and in America is shown by quotations from the press of the two countries. The London *Times* called it a "deadly instrument," the Quebec papers expressed dissatisfaction, while those in this country loudly acclaimed it, for it brought peace. Jackson's victory made, in a way, a *succes d'estime* of what was, in fact, only a *modus vivendi*.

The third part treats of the negotiations (some of them still in progress, e.g., the boundary at the northwest corner of the Lake of the Woods) proceeding from the Treaty of Ghent. The execution of the articles of the treaty was not marked at all times by large-mindedness on either side, and the matters left unsettled fortunately yielded in course of time to negotiation or to arbitration. One wonders, after all, if it was the treaty which kept the peace; rather was it, as is usually the case, what lay behind the treaty that forebore taking the final step in 1846, or in 1861, or in 1895.

JESSE S. REEVES.

Principles and Methods of Municipal Administration. By WILLIAM BENNETT MUNRO. (New York: Macmillan, 1916. Pp. xi, 491.)

Professor Munro has produced four excellent volumes dealing with city government. The first, *Government of European Cities*, appeared in 1909. That volume explained the structure and functions of city governments in France Prussia, and England. The second book, *The Government of American Cities*, was published in 1912 and deals with the framework of municipal organization. The third book, *Bibliography of Municipal Government in the United States*, appeared in 1915 and contains about 5000 titles. The fourth book, the one under review, deals with the actual management of municipal business, especially in the United States, and thus supplements *The Government of American Cities*.

The ten chapters in this book deal in succession with the following topics: "The Quest for Efficiency," "City Planning," "Streets, Water-Supply, Water Disposal and Sewerage," "Public Lighting," "Police Administration," "Fire Prevention and Fire Protection," "School administration," and "Municipal Finance." In these chapters the author succeeds in his "endeavor to translate many so-termed complicated questions into ordinary language," and advances no panaceas. He approves of the simplification of the machinery of local administration but says, "The vultures of city politics are not a bit afraid of the commission charter, the initiative, the referendum, and recall, the direct primary, the preferential ballot, or any other mechanical reform, so long as reformers keep hugging the delusion that they can reconstruct a government without taking the electorate into their reckoning" (p. 8). On the other hand Professor Munro does not favor turning the government over altogether to experts but feels that the fundamental requisite of good government is to keep the eyes of the people open. "Publicity pamphlets which try to give voters the entire story on the eve of an election" are not sufficient, but many methods are necessary to enlighten the electorate.

No general statement can be made regarding the author's attitude toward municipal problems as he is very discriminating in all of his opinions. However, his views regarding a few interesting problems might be given somewhat at random. As to public ownership he says "the water-supply system, in the judgment of those best qualified to give an impartial opinion, ought to be owned and operated as a municipal enterprise," first, because of its bearing upon the public health, second, because the city departments are themselves large consumers of water, and third, because water rates often determine the location of industries (p. 164). As to the wisdom of municipal ownership of gas plants and electric plants the author is non-committal, merely giving arguments pro and con, (pp. 258-9) but "there is much to be said in favor of the city's owning its lighting equipment (apart from the lighting plant itself" (p. 240). As to construction work he says, "On the whole the contract system of municipal construction, whether applied to streets or to other public work, is probably the cheaper method, . . . but the contract system opens the door to numerous abuses" (p. 97). Social considerations as distinguished from economic may dictate construction by city employees.

Mr. Munro refers approvingly to the constitutional amendments of Massachusetts, Ohio, Wisconsin, and New York, which give the right

to condemn more land than is actually needed for public improvements and to sell the excess for private use after the work is done (p. 92). In connection with private property he relates that since 1909 Los Angeles has enforced an ordinance excluding numerous industries from residential districts, and the highest state courts have upheld the law.

In the chapter on fire prevention and fire protection the former is emphasized. "As regards appliances, methods, and personnel we have almost nothing to learn from any European city in the science of fighting fire," but the per capita loss of property in the United States and Canada is \$2.62 as compared to \$.53 in England, \$.81 in France, \$.21 in Germany where more attention has been given to measures for prevention.

In referring to water-supply as merchandise a surprising statement is made. "Calculated in terms per thousand cubic feet, the cost of purifying and delivering water is about one half the cost of manufacturing and distributing illuminating gas" (p. 166).

On page 443 under municipal finance, as a suggested new source of revenue, we read: "In Buenos Aires the city treasury receives a net income of about \$100,000 annually from the bill-boards which it owns and leases; while in New York City, it is estimated, the bill-boards bring to their private owners a gross income of more than a million dollars a year."

The contents of the book are most practical and the style extremely clear—even to the extent of repetition in some instances (see p. 129). The volume completes a set of text books which makes possible a satisfactory course in municipal government even for the small colleges.

FRANK ABBOTT MAGRUDER.

Men of the Old Stone Age. By HENRY FAIRFIELD OSBORN.
(New York: Charles Scribner's Sons. 1915. Pp. xxvi, 545.)

In this thoroughly comprehensive work, Professor Osborn gives a systematic account of all relics and vestiges of prehistoric man as yet known to science. The author made personal studies of the principal camping stations of prehistoric man in Western Europe, but in preparing the work he has availed himself of the coöperation of many specialists. The work is profusely illustrated, and is accompanied by diagrams and maps. It deserves to be read and pondered by political scientists, for it will help to clear away misleading notions. One is apt to think of man as an individual, progressing from animalism to savagery, thence to barbarism, and at last to civilization. But from the

time that indisputable evidence of the existence of human beings is found there is evidence that human life was distinctly social life. The facts given by Professor Osborn indicate a surprising density of population in certain areas in Palaeolithic times. Because many relics have been found in caverns the misleading term "cave dwellers" has been applied to people of that period. But professor Osborn points out that, strictly speaking, there was no cave life. The people lived in the open, resorting only occasionally to the caves. "The deep caverns were probably penetrated only by artists and possibly also by magicians or priests." The relics of prehistoric man found scattered through Europe should not be regarded as ancestral to the present people. As a rule they represent aberrant types, or extinct species. Europe is a terminal region in which from age to age many waves of biological invasion have spent themselves. The evolution of the individual human being has been an incident of a struggle between different societies with their characteristic institutions, that has been going on for innumerable milleniums.

HENRY JONES FORD.

The Collected Papers of John Westlake on Public International Law. Edited by L. OPPENHEIM, M.A., LL.D. (Cambridge University Press. 1914. Pp. xxx, 706.)

This collection of papers arose out of a design originally entertained after Professor Westlake's death of publishing a second edition of the *Chapters on International Law*, which appeared in 1894. It was a happy inspiration that led the editor and publishers to embody therein the most interesting and important of the eminent author's smaller contributions to his favorite subject. For lack of space it was unfortunately found impossible to include the French papers, which for the most part appeared in the *Révue de Droit International et de Législation Comparée*. A complete bibliography of Westlake's writings is given in the appendix on pp. 678 ff.

The *Chapters* are reprinted as Part I of the *Collected Papers*. It is perhaps unnecessary to review this part of the book, inasmuch as they are well known to students of international law and many of the ideas contained in them have obtained a still greater currency through their incorporation into the author's later work on *International Law*. Especially valuable and important are the historical sections and the chapters on "India" and "War."

In view of Germany's conduct of the present war, it is of particular interest to read Westlake's comments (pp. 246 ff) upon Professor Lueder's distinction between *Kriegsmanier* (ordinary rules of war) and *Kriegsraison* (what is exceptionally permitted). Professor Westlake was undoubtedly justified in his criticism, but hardly in his surmise that "it need not be greatly feared that Professor Lueder's own government will ever give effect to his doctrine by ordering the devastation of a whole region as an act of terrorism." German commanders evidently do not merely indulge in speculative play with strange theories of frightfulness, they actually practice them.

In the final section dealing with "Improvement of the Laws of War" (pp. 274 ff), Westlake's words become almost prophetic. After calling attention to the remarkable development of the sentiment of pity and of an enthusiasm for humanity during the nineteenth century, he remarks:

"And now there are ominous signs that pity, as an operative force in the mitigation of war, has nearly reached its limit Theoretical writers have been found to preach what at one time they had been unanimous in denouncing, the devastation of whole tracts of country from sheer terror, or in vengeance for stubborn resistance by the enemy. And the bombardment of undefended coast towns has been advocated by professional sailors The pity which is effectual to work great changes is that which, in running at once through millions of men, is intensified by the enthusiasm which masses engender. But pity for suffering in war is liable in democratic times to encounter other feelings of equal extent and opposite tendency, the consciousness that the war in which the nation is engaged has been willed by it, and the national determination to triumph at any cost.

. . . . The plea of necessity, even when justified, has a dangerous tendency to corrupt and degrade those who urge it; and when it has sapped the foundations of one fence, no other fence into the construction of which it has been introduced can be greatly relied on."

Part II contains twenty-two miscellaneous papers naturally varying greatly in interest and importance.

From the standpoint of the present war at least, the most interesting are those dealing with "Commercial Blockade," "Contraband of War," "Continuous Voyage," "Reprisals," "Belligerent Rights at Sea," "The Declaration of London," etc.

The papers in "The Venezuelan Boundary Question" and "The Transvaal War" have considerable historic interest.

The paper on "Commercial Blockade" contains some strong arguments in favor of the abolition of commercial blockades. It was published in 1862 and inspired by a sense of the fearful suffering to which England was subjected by Lincoln's blockade of the southern ports during our Civil War. It may be considered doubtful whether were he still living the author would approve of the same arguments if used in behalf of Germany against the present British orders in council.

We may on the other hand feel reasonably certain that he would still employ the same argument which he urged in 1870 against a certain memorandum presented by Count Bernstorff to Earl Granville in favor of the view that the British government should prohibit the export of contraband to France.

As regards the doctrine of continuous voyage, Westlake was in agreement with the principle later adapted by the London Naval Conference of 1909 that it does not apply to a breach of blockade. In general it may be said that he was not an extreme advocate of belligerent rights at sea, but that he was a warm, if discriminating, supporter of the Declaration of London and the work of the Hague Conferences.

Though not strictly within the scope of a review of these papers, the reviewer should like to call special attention to the article on "International Arbitration" printed as an appendix to the first volume of Westlake's *International Law* and to the author's views on "The Theory of Neutrality" as contained on pp. 161 ff. of the second volume.

It would be well for all peace advocates seriously to study and ponder over the article on "International Arbitration." It includes some of the clearest and most weighty statements pointing out the political limits to arbitration to be found anywhere in the literature of the subject.

At a time when many Americans seem to look upon the status of neutrality as desirable or praiseworthy in itself, it is perhaps not out of place to note that Westlake was not a warm advocate of neutrality. In this respect he was a true follower of Grotius, who believed it to be "the duty of neutrals to do nothing which may strengthen the side which has the worse cause, or which may impede the motions of him who is carrying on a just war."

Westlake says: "There is no general duty of maintaining the condition of neutrality. On the contrary, the general duty of every member of a society is to promote justice within and peace only on the footing of justice, such being the peace which alone is of much value or likely to be durable. Thus in a state, the man would be a bad citizen who

allowed a crime to be committed before his eyes without doing his best to prevent it, or who refused to assist the magistrates in punishing crime, and in the society of states the action of all the members in upholding its laws is the more required since an organized government is wanting We may sum up by saying that neutrality is not morally justifiable unless intervention in the war is unlikely to promote justice, or could do so only at a ruinous cost to the neutral."

Westlake was a believer in a *society of states*, the members of which are interdependent as well as sovereign or independent.

In evaluating the worth of Professor Westlake's contributions to International Law, the reviewer finds himself in hearty agreement with the estimate of the editor of these papers, Professor Oppenheim (pp. viii f): "Westlake was a most profound jurist and thinker, with a very wide range of interests. Generations to come will appreciate his works. International Law is to a great extent the product of the nineteenth century, and Westlake has assisted much in developing and shaping it. It was characteristic of him that he never evaded difficult problems, but sought them out, faced them, and, so to say, wrestled with them. It is for this reason that almost every page of his work is of importance; every writer on questions of International Law must take account of the opinion of Westlake on the subject concerned. As an authority, he was recognized all over the world, and his counsel was frequently sought by the British and by foreign governments."

A. S. HERSHEY.

Empire and Armament. The Evolution of American Imperialism and the Problem of National Defense. By JENNINGS C. WISE. (New York: G. P. Putnam's Sons. 1915. Pp. 353.)

The historical portions of this book are disappointing; but the volume as a whole is well worth reading. It is timely and popular rather than scholarly. At times it is inaccurate with reference to matters of common knowledge, as when, for example, the author declares on page 22 that the "Articles of Confederation went into effect in July, 1778." It is frequently extreme in its interpretation of America's dealings with foreign nations. as when, on page 184, it intimates that Americans have uniformly displayed "utter contempt for the international rights of other nations." "Invariably," it declares, "whenever the occasion has made it possible, the old spirit of aggression had manifested itself." And it consistently follows the logic of these words by so representing each step in our national expansion as to make it appear that we were

deliberately preying upon our neighbors. Our national danger, declares the author, is an "impertinent imperialism which fosters the invasion of one-half of the world while reserving to its exclusive exploitation the other half." His aim is to show that our national history has been dominated throughout by two great ideas, the one an unreasonable prejudice against armies, and the other a Jingoism which has made us eager for war "whenever a seeming cause therefor arose." He presents well known incidents in rather a novel and striking manner, allowing himself the luxury of unusual historical judgments without producing the proofs necessary to sustain them. He is unconvincing for example, when he declares that President Monroe, in issuing his message of December, 1823, "merely sought to prevent Europe from denying the United States the full freedom of trade in this hemisphere." He even performs the feat of exaggerating Andrew Jackson's fighting qualities, declaring that "there was not a pacific thought in Jackson's mind at this or any other time." But, inspite of these defects, the book is valuable, and as we pass out of the part devoted to historical summary, it begins to become apparent that we are dealing not with history, but with a brief drawn in favor of military preparedness.

His plea for a national defence program drawn up by men who know the military problems before us is summed up in the phrase: "Rational men do not consult dentists upon medical questions, but they accept with the utmost confidence the views of a politician upon matters of a military nature.

His views upon the question of preparedness are condensed into a single sentence: "Let us strive on and continue to enlighten the advocates of war, but let us be prepared to overwhelm every possible enemy with arms should he refuse to be educated and prefer to assail us instead."

The national guard he defines as "Merely . . . a less efficient and relatively more costly regular force than the one completely controlled by the federal government and known as the regular army."

His general position he declares to be: "to deprecate war and at the same time advocate adequate national armament, holding without apology the conviction of Washington, . . . that the best way to preserve peace is to be prepared for war."

As a history of American expansion, *Empire and Armament* is not a safe guide; but as a plea for preparedness it deserves a wide circulation, as it emphasizes many lessons which the American people need to learn.

ROBERT M. McELROY.

West Point in Our Next War. The Only Way to Create and to Maintain an Army. By MAXWELL VAN TANDT WOODHULL. (New York: G. P. Putnam's Sons. 1915. Pp. 266.)

The author's avowed purpose is "to point the way—the only way—to safety and success through thorough preparation."

Transfer the Philippines to Germany; prepare to defend the Hawaiian Islands and Alaska "at all hazards and to the death;" and reorganize the army by frankly abandoning the volunteer system as obsolete. Then increase the number of cadets to thirty-six hundred, and build up your army upon a system of conscription, "the most democratic, the fairest, the most equal and the only logical method on raising and maintaining modern armies." This will place the United States in a position of security. and this alone can accomplish it. The book is chiefly an elaboration of these propositions. It contains 266 pages of text, without an index. The postscript, in the form of a letter, is devoted to a criticism of Secretary Garrison's plans for national defense.

ROBERT McNUTT McELROY.

Regulation of Railroads and Public Utilities in Wisconsin. By FRED L. HOLMES. (New York and London: D. Appleton and Company. 1915. Pp. xi, 375.)

Mr. Holmes has prepared a painstaking account of the work of the Wisconsin Railroad Commission; under the laws for the regulation of railroads and other public utilities in that State. As a member of the legislature, serving as chairman of the assembly committee on transportation, he has been in a position to know the objects and provisions of the laws and to observe the results. His book gives evidence of careful study of the published reports of the commission, and also contains much information from its unpublished records. Quotations are given freely from the opinions of the commission and from addresses of the commissioners, as well as from judicial opinions, to show the principles and reasoning underlying the decisions, and this is further supported by statistical and other data explaining the decisions and their results.

The contents of the book demonstrate the comprehensive and intensive character of the commission's work in all its phases. In regulating rates, and service, capitalization and accounting, and in its valuations, the Wisconsin commission has set a high standard of scientific investigation which should be clearly recognized, even by those who

may not accept all of its conclusions. This aspect of the operation of the Wisconsin laws is confirmed by the record of court reviews of the commission's decisions. Not a freight rate has been reversed. Of 2511 formal orders of the commission, fifty appeals have been taken, but in only thirty were the appeals perfected. In two cases the commission was reversed, and in two other friendly suits to secure a judicial interpretation of sections of the law the commission was overruled.

In conclusion, the author believes that, while state regulation may not have fulfilled the iridescent dreams of many, it has been a success. The financial savings as the result of lower rates and better service are estimated at \$3,350,900 annually, at an average cost of less than \$100,000 a year. In Mr. Holmes opinion, with the developments of the future, state regulation of public utilities should be strengthened rather than curtailed.

The volume is a valuable contribution to an important subject. But it is not the final word on the subject of state regulation of public utilities. Limited to a study of the Wisconsin commission, it does not consider some of the problems which have been presented in other States, where the personnel and methods of the state commissions have been more open to criticism. Moreover, while the discussion given presents points and arguments which need to be faced by those who have attacked the Wisconsin commission, the author has not squarely met and answered some of the specific criticisms which have been made by those who advocate municipal rather than state regulation.

From the viewpoint of literary style, the book is not easy reading. It deals with a complicated subject in a way which will be of service to the serious student. It is not a popular essay for the general reader.

JOHN A. FAIRLIE.

Pathological Lying, Accusation and Swindling. By WILLIAM HEALY and MARY TENNEY HEALY. Criminal Science monographs No. 1: Supplement to the *Journal of the American Institute of Criminal Law and Criminology*. (Boston: Little, Brown and Co. 1915. Pp. 286.)

This book is a collection of material drawn from the study of cases of a type with which the juvenile courts are frequently concerned, and is apparently intended to interest "lawyers and other students of criminalistics."

The authors define pathological lying as "Falsification entirely dis-

proportionate to any discernible end in view, engaged in by a person who, at the time of observation, cannot definitely be declared insane, feeble-minded or epileptic;" and pathological accusation, as "False accusation indulged in apart from any obvious purpose." Swindling is included in the discussion because of the "natural evolution of this type of conduct from pathological lying"—a striking comment on the alleged lack of purpose in the lying and accusation.

Following a survey of the literature (principally foreign) on *pseudologia phantastica* (the complicated lying of pathological subjects), are the more or less detailed histories of twenty-seven cases, mostly young females. In the conclusions from the study of these cases, little if any light is thrown on them. The more important indications are: that on the average, the nineteen pathological liars who are considered by the authors as "mentally normal" make a poorer record on the laboratory "testimony" test than other "mentally normal offenders," and that the heredity and the physical conditions of development, as well as the mental training, of these delinquents, were bad. The authors show a singular vacillation between the tendencies to emphasize the principle that "The person who is seemingly normal in all other respects may be a pathological liar" and the contrasting principle that "pathological lying is very rarely the single offense of the pathological liar."

In the foreign literature reported, the lying appears as a consequence or symptom of various pathological conditions, ranging from epilepsy and hysteria to less definite disorders. In most of the Healy's cases, the causes which underlie the *pseudologia* are clearly suggested to the reader. Sex plays a large part: sexual delinquency, precocious sex experience, and masturbation being characteristic of most of the cases, and unsatisfied sex longings strongly indicated as the source of the motives in several. The importance of early training in lying, which has especial bearing on the sexual lying of girls; and the fundamentally purposive nature of lying, are strikingly illustrated in nearly all of the cases presented. The "pathological lying" in these cases is curiously similar to the performances of the common variety of liars of whom the Hebrew king complained.

The predominance of girls among the pathological liars seems to the authors to confirm the old statement that girls have a greater natural tendency to lie than do boys. Rather does it point to the fact that parents and society are more lenient towards male delinquents of the sexual type than towards female delinquents of the same type, and

hence more female than male cases will be brought before the investigators.

As a source from which to draw comparative material, especially for the study of the development and pathology of purposes, the Healys' book will doubtless be ultimately of value.

KNIGHT DUNLAP.

Principles of Labor Legislation. By JOHN R. COMMONS and JOHN B. ANDREWS. (New York: Harper and Brothers. 1916. Pp. 524. \$2.)

The body of this book consists of an excellent analytical presentation of the salient points in existing labor law and in proposed legislation in fields as yet not adequately occupied in the United States. This is leavened by an exposition of the economic and legal reasoning underlying the actual or proposed legislation and by criticisms of and proposals for changes in the methods of drafting and enforcing labor laws. The book is intended for college students and the general reader.

Each field of labor legislation, from regulation of time of payment to compulsory insurance against unemployment, is taken up in turn, and this topical treatment occupies seven of the nine chapters and a larger proportion of the pages. In each field the economic arguments for state action, and in some the constitutional points involved, are outlined and the content of the laws enacted or proposed is there examined from the standpoint of its efficiency in meeting the particular problem presented. In one respect, that of court decisions as to the rights and disabilities of the parties in labor struggles, the authors go outside legislation in the narrow sense, and with good results. Viewed as a summary of labor law the book is comprehensive and adequate, without going into wearisome detail, and as such will receive a hearty welcome.

The treatment of the "principles" underlying labor legislation as a whole occupies but eleven pages. These come at the end of the first chapter, which is entitled "The Basis of Labor Law." In this chapter are outlined the constitutional limits within which labor law must stand, and the two principles of law and justice under which modern labor law qualifies, according to the authors, are those of *public benefit* and *equal protection of the laws*. The change in public and judicial opinion, with changing economic conditions, as to the desirability of public regulation of the labor contract and of redressing the inequality in the labor bargain by giving one side a handicap is strikingly and sug-

gestively, but too briefly, traced. One cannot but regret that authors as well qualified as these two have given us such a meagre treatment of the principles of labor legislation in general.

In breadth of treatment and in constructive suggestion the last chapter, entitled "Administration," is far more satisfying. The authors use the term "Administration" in no narrow sense. Among other things it "is the means of investigating, drafting, and adopting enforceable laws." It is "legislation in action." And the essence of administration is investigation. A fourth department of government, administration, is therefore advocated, the primary function of which is investigation and which will absorb the investigation work of the executive, legislature, and judiciary. This fourth department is to be managed by the industrial commission, advised by a council made up of representatives of the employers and workers, and it is implied that the legislature and the courts should accept its data and follow its recommendations. The desirability of the legislature confining itself to the laying down of standards, in most spheres of labor legislation, and allowing the commission to apply those standards after an investigation of the facts and conditions in each case, is much emphasized and properly. There is also a suggestive but limited exposition of the advantages of enlisting the coöperation of those in the industry in the enforcement of standards of health and safety through financial inducement and financial pressure over the method of prosecutions for violations as a means of securing the ends aimed at in the legislation. The advanced student may disagree with much in this chapter, but he will find it stimulating.

D. A. McCABE.

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST

JOHN A. DORNEY

Library of Congress

UNITED STATES

Addresses of President Wilson January 27–February 3, 1916 . . . 1916.
72 p. 8°. House doc. No. 803.

Note: Contains addresses delivered at New York, Pittsburgh, Cleveland, Milwaukee, Chicago, Des Moines, Topeka, Kansas City, St. Louis.

The Admission of Chinese, Treaty, Laws, and Rules Governing. Rules approved October 15, 1915. . . . 1915. 48 p. 8°. *Department of Labor, Bureau of Immigration.*

Affairs in Mexico. Message from the President of the United States transmitting in response to a senate resolution of January 6, 1916, certain information relative to affairs in Mexico. Senate Doc. 324. 1916. 55 p. 8°. *Dept. of State.*

American Policy in Nicaragua. Memorandum on the convention between the United States and Nicaragua relative to an interoceanic canal and a naval station in the Gulf of Fonseca, signed at Managua, Nicaragua, on February 8, 1913, by George T. Witzel former American minister to Nicaragua, 1912–13. Senate Doc. 334. 1916. 33p. 8°.

Armed Merchantmen. International Relations of the United States . . . Senate Doc. 332. 1916. 54 p. 8°.

Contains extracts from the following articles and publications, *Moore's Digest of International Law*, *Journal of International Law*, *North American Review*, *Armed Merchantmen*, by Jonkheer W. J. M. von Eysinga, *Resistance against lawful exercise of the right of stoppage, visit and search*, by Dr. George Schramm.

Armor Plant for the United States. Hearings before the Committee on Naval Affairs United States Senate . . . on S. 1416, A bill to erect a factory for the manufacture of Armor. 1916. 172 p. 8°.

Articles of War, Revision of the, Report from the Senate Committee on Military Affairs. [To accompany S. 3191.] [1916] Senate Report no. 30. 100 p. 8°.

The Atlantic Fleet in 1915. Letter from the Secretary of the Navy transmitting . . . Annual report of the Commander in Chief of the Atlantic fleet for the year ending June 30, 1915 . . . also a letter from the Secretary to the Chairman of the Senate Committee on Naval Affairs transmitting certain statements relative to the action taken by the Navy Department to advance the efficiency of the Atlantic Fleet. 1916. 31 p. 8°. Senate Doc. No. 251.

Louis D. Brandeis, Nomination of. Hearings before the subcommittee of the committee on the Judiciary United States Senate . . . on the nomination of Louis D. Brandeis to be an associate justice of the supreme court of the United States. Pt. 1-21 (with index). 1916. 1319 p. 8°.

Child Labor, To Prevent Interstate Commerce in the Products of . . . Report from House Committee on Labor. [To accompany H. R. 8234.] [1916] 41 p. 8°. House Report No. 46. pt. 1.

———Views of the Minority . . . [1916] 14 p. 8°. House Report No. 46. Pt. 2.

Child Labor Legislation in the United States. By Helen L. Sumner and Ella A. Merritt. Industrial series No. 1. Bureau publication No. 10. 1915. 8°, Various paging [Approx. 1300] 8°. *Department of Labor, Children's Bureau.*

Note: Contains test of laws of the various states effecting child labor and analytical tables of the same.

Citizenship, Registration of American Citizens, Issuance of Passports, etc. Compilation of certain departmental circulars relating to. 1915. 88 p. 8°. *State Department.*

Constitution. Article entitled Back to the Constitution by Walter Clark, LL.D. Chief Justice of the supreme court of the State of North Carolina. Senate doc. 308. 1916. 13 p. 8°.

Electric Power Development in the United States. Letter from the Secretary of Agriculture transmitting a report in response to a senate Resolution of February 13, 1915, as to the ownership and control of the water-power sites in the United States. Senate Doc. No. 316. In three parts. Pt. 1. 1916. 62 p. 4°.

European War from Observations Taken Behind the Allied Armies in France, Report on the Medio-Military Aspects of the. By Surgeon A. M. Fauntleroy, U. S. Navy . . . 1915. 146 p. 8°. *Navy Department, Bureau of Medicine and Surgery.*

Fiscal Relation Between the United States and the District of Columbia. Report of the joint select committee of the Congress of the United States . . . together with the hearings held before the select committee thereon. In two volumes. Vol. 1. 1916. 1007 p. Vol. 2. 1008-1752 p. 8°.

Note: Committee appointed "to prepare and submit to congress a statement of the proper proportion of the expenses of the government of the District of Columbia, or any branch thereof, including interest on the funded debt, which shall be borne by said District and the United States" . . .

The Government of the Philippine Islands. Message from the President of the United States transmitting a letter from the Secretary of War submitting a report of Brig. Gen. Frank McIntyre, Chief of the Bureau of Insular Affairs, upon his recent trip to the Philippine Islands. Senate document 242. 1916. 51 p. 8°.

Labor Difficulties in the Coal Fields of Colorado . . . Report of the Colorado Coal Commission on the labor difficulties in the coal fields of Colorado during the years 1914 and 1915. 1916. 16 p. 8°. House doc. 859.

Manufacture of Armor. Report of Senate Committee on Naval Affairs [to accompany S. 1447]. Senate Report No. 115. [1916] 4 p. 8°.

Note: Report recommends the enactment into law of Bill S. 1417. providing for the construction of a government owned armor plant.

Military Policy, An Outline of the Proposed. 1915. 8 p. 8°. *War Department.*

Military Establishment, Increasing the Efficiency of. Report [to accompany H. R. 12766] by the House Committee on Military Affairs. 1916. 23 p. 8°. House Report 297.

Navigation Laws. Comparative study of principal features of the laws of the United States, Great Britain, Germany, Norway, France and Japan, prepared by Grosvenor M. Jones, commercial agent, in collaboration with the Bureau of Navigation and Steamboat-Inspection Service. Special Agents Series—No. 114. 1916. 190 p. 8°. *Department of Commerce, Bureau of Foreign and Domestic Commerce.*

First Pan-American Financial Conference convened by authority of the Congress of the United States under the direction of Hon. William G. McAdoo, Secretary of the Treasury . . . Proceedings of the. 1915. 744 p. 8°. *Treasury Department.*

Power of the Executive (in the absence of legislation by Congress) to prevent a breach of neutral obligations imposed upon the United States by the Law of Nations or by treaty, Supplemental brief in the support of the. 1915. 47 p. 8°. *Department of Justice.*

Preparedness for National Defense. Hearings before the Committee on Military Affairs United States Senate. . . . on bills for the reorganization of the army and for the creation of a reserve army . . . 1916. 1053 p. 8°.

Preparedness For National Defense . . . Report[s] [to accompany S. 4840.] [1916] 26. 2 p. 8°. Senate Report 263. Pt. 1. Pt. 2. *Senate, Committee on Military Affairs.*

Note: Pt. 2. Views of a Minority.

The Power of the Judiciary Over Legislation. . . . By Hon. J. Crawford Biggs, President of the North Carolina Bar Association. Senate doc. 341. 1916. 27 p. 8°.

A Proper Military Policy for the United States, Statement of. Prepared by the war college division, General Staff Corps in compliance with instructions of the Secretary of War March, 1915. 1915. 29 p. 8°. *War Department.*

The Seamen's Act of 1915. Address delivered at the ninth annual meeting of the American Association for Labor Legislation held in Washington, D. C., on December 28, 1915 by Henry W. Farnam, Professor of Economics, Yale University. Senate Doc. 333. 1916. 16 p. 8°.

Secretary of War Garrison's Explanation of the Military Policy Recommended by Him and Approved by the President. [1916] 8 p. 8°.

The Ship Purchase Bill, Maintenance of a Lobby to Influence Legislation on. Report from a special committee of the Senate. [Pursuant to S. Res. 543.] Senate Report. 23. Pt. 1. 16 p. 8°.

Statement Made by Secretary of War to the Committee on Military Affairs of the House of Representatives. Thursday, January 6, 1916. 1916. 20 p. 8°.

Steamboat-Inspection Service, Preliminary report, committee of supervising inspectors. House document No. 504. [1916] 8p. 8°. *Department of Commerce.*

Note: Special Committee appointed by Department of Commerce immediately after the *Eastland* disaster to determine what means if any were needed to improve the Steamboat-Inspection Service upon the Great Lakes.

The United States Postal Money-Order System. A survey of the system for the purpose of ascertaining its condition and advancing its efficiency and economical administration, conducted by a Departmental Committee under the direction of Albert S. Burleson, Postmaster General. 1915. 156 p. 8°. *Post Office Department.*

War Risk Insurance, Report of the Director of the. House doc. 544. 1916. 15 p. 8°.

Note: Report covers period September 2, 1914, to November 30, 1915.

Water-Power Bill . . . Committee on Interstate and Foreign Commerce . . . report [to accompany S. 3331]. [1916] 12 p. 8°. House Report No. 404.

Woman and Child Wage Earners in the United States, Summary of the Report on Conditions of. Bulletin 175. House doc. 1708. 1916. 445 p. 8°. *Department of Labor, Bureau of Labor Statistics.*

Woman Suffrage. Report from the Senate Committee on Woman Suffrage. [To accompany S. J. Res. 1.] Senate Report No. 35. 5 p. 8°.

CALIFORNIA

Constitution of the State of California and Summary of Amendments, to which are appended Magna Charta, Declaration of Rights, Declaration of Independence, the articles of confederation and the constitution of the United States. 1915. 348 p. 15°. *Legislative Counsel Bureau.*

Initiative and Referendum, Provisions of the Constitution and Statutes of California governing the submission of measures to the whole people by the . . . 1916. 12 p. 8°. *Legislative Counsel Bureau.*

GEORGIA

Manual of the General Assembly of the State of Georgia, 1915-1916. . . . 1915. 227 p. 12°. *General Assembly.*

ILLINOIS

Municipal League Held at the University of Illinois, Urbana, November 2-3, 1915, Proceedings of the Second Annual Convention of the. 1915. 108 p. University of Illinois Bulletin. Vol. 13, no. 18.

Organization and Efficiency of the University, with a view to drafting ultimately a constitution for the University of Illinois." Report of Special Senate Committee authorized February 6, 1911 "to make a thorough investigation of the. Presented to the Senate June 7, 1915. 1915. 44 p. 8°. Bulletin V. 13, no. 4. *University of Illinois.*

INDIANA

Taxation, Proceedings of the Commission on. 1915. 229 p. 8°.

Note: Commission appointed under provision of Chapter 114 of the acts of 1915 . . . to investigate the problems of taxation in Indiana.

MARYLAND *

Maryland Manual, 1915-1916. A Compendium of legal, historical and statistical information relating to the State of Maryland. . . . 331 p. 8°. *Secretary of State.*

NEW JERSEY

Municipal Financing, Report of the Commission for the Survey of. 1915. 31 p. 4°. *Legislature.*

Note: Committee appointed under resolution of March 2, 1915, to make an exhaustive review of municipal finances and to report findings and recommendations.

Pensions for State and Municipal Officers and Employees, Report of the Commission to Investigate . . . 14 p. 8°. *Legislature.*

Reorganization and Consolidation of the Different Departments of the State Government, Fourth Report of the Commission upon the . . . 1916. 26 p. 8°. *Economy and Efficiency Commission.*

NEW YORK

Constitutional Convention of the State of New York, 1915, begun and held at the Capitol in the city of Albany on Tuesday the sixth day of April, Record of the. 1915. 4578 p. (4 V.) 8°.

The Governor's Budget Conference. Revision of Desired Appropriations by the State Department . . . for the fiscal year of 1916-1917 . . . [1916.] 42° p. 8°.

Note: Transmitted to the legislature by the governor as an exhibit in connection with the tentative state budget proposal, January 5, 1915

Joint Legislative Committee for the Investigation of the Finances of the City of New York. Report . . . transmitted to the Legislature, February 7, 1916. 1916. 56 p. 8°. *Legislature.*

OREGON

Election Laws of Oregon Relating to the Duties of Public Officials, Electors and Candidates, and to the preparation and filing of initiative petitions, arranged in order according to dates 1916, Digest of. Prepared by Ben W. Olcott, Secretary of State. 1916. 48 p. 8°.

Statutes and Constitution Relating to Elections in the State of Oregon. Compiled from Lord's Oregon laws and the session laws of 1911, 1913, 1915; also such provisions of the constitution of Oregon and such statutes of the United States as pertain to elections in this state . . . 1915. 245 p. 8°. *Secretary of State.*

PENNSYLVANIA

Employment and Compensation of Prisoners in Pennsylvania. Report of the Penal Commission appointed under authority of an act approved July 25, 1915. 1915. 112 p. 8°.

Smull's Legislative Handbook and Manual of the State of Pennsylvania, 1915. . . . 1915. 1320 p. 8°. *General Assembly, Senate.*

SOUTH CAROLINA

Legislative Manual. Seventy-first general assembly of South Carolina, second session January 11-February, 1916 . . . [1916] 115 p. 8°. *General Assembly, House of Representatives.*

SOUTH DAKOTA

Legislative Manual, 1915 . . . Fourteenth session of the Legislature, 1915. 1915. 643 p. 8°. *Bureau of Printing.*

TENNESSEE

Tennessee Directory and Official Vote 1914, for Presidential Electors, Governor, Railroad Commissioners, Congressmen, Senators and Representatives . . . [1915] 46 p. 24°. *Secretary of State.*

VIRGINIA

Liquor Laws of Prohibition States, Extracts from . . . 1916. 264 p. 8°. *Legislative Reference Bureau.*

WASHINGTON

Salmon Canning Industry in the State of Washington and the Employment of Oriental Labor, Special Report on the . . . 1915. 16 p. 8°. *Bureau of Labor.*

AUSTRALIA

New Industries. Reports. 1915. 21 p. fol. *Interstate Commission.*

Note: Information furnished Parliament of the new industries that could with advantage be established in the Commonwealth..

Returns of Food Stocks Under the "War Precautions Act 1914-1915." [1915.] 14 p. fol.

Note: Report is an inventory of food-stuffs in storage in the Commonwealth of Australia up to the end of September, 1915.

CANADA

Civic Improvement League for Canada. Report of preliminary conference. 1915. 48 p. 8°. *Commission of Conservation.*

Note: Conference met at Ottawa, November 19, 1915 for the purpose of discussing plans for the formation of a civic improvement league for Canada.

FRANCE

La revision Générale de l'Evaluation des Dommages Resultant de Faits de Guerre, Commission Superieure Chargee de. Rapport général sur les méthodes d'évaluation des dommages présenté au nom de La Commission Superieure par M. Hébrard de Villeneuve, President de la section de L'Intérieur du Conseil D'Etat. 1915. 19 p. 4°.

GERMANY

Belgische Aktenstücke 1905-1914. Berichte der belgischen Vertreter in Berlin, London und Paris an den minister des Aeusseren in Brüssel . . . Berlin 140 [156] p. 4°. *Auswärtiges Amt.*

Employment, Contrary to International Law, of Colored Troops upon the European Arena of War by England and France. [Translation] [1915] 35 p. fol. *Foreign Office.*

GREAT BRITAIN

Alleged Ill-Treatment of German Subjects Captured in the Cameroons Correspondence relative to the. 1915. 47 p. fol. [Cd. 7974.] Price 5d. *Colonial Office.*

British Trade After the War. Report of a sub-committee of the advisory committee to the Board of Trade on Commercial Intelligence with respect to measures for securing the position, after the war, of certain branches of British Industry. 1916. 18 p. fol. [Cd. 8181.] Price 2½d.

Captain Von Papen, Late German Military Attaché at Washington, Falmouth, January 2, 3, 1916. Selection from papers found in the possession of, 1916. 35 p. fol. Miscellaneous No. 6 (1916) [Cd. 8174.] Price 6d. *Foreign Office.*

Civil Service, Royal Commission on. Sixth report of the Commissioners. 1915. 84 p. fol. [Cd. 7832.] Price 9d.

— **Appendix [to above report].** 1915. 788 p. fol. [Cd. 8130.] Price 6s. 3d.

Food and Raw Material Requirements of the United Kingdom . . . 1915. 123 p. fol. [Cd. 8123.] Price 1s. *Dominions Royal Commission.*

Health of Munitions Workers Committee. Report on Industrial Canteens. 1915. 7 p. fol. [Cd. 8133.] Price one penny. *Ministry of Munitions.*

— **Report on Sunday Labour.** 1915. 6 p. fol. [Cd. 8132.] Price 1d. *Ministry of Munitions.*

Manual of Emergency Legislation Comprising All the Acts of Parliament, Proclamations, Orders, etc., passed and made in consequence of the War with an introductory note and an analytical index. . . . Suppl. No. 4. to August 31, 1915. 1915. 452 p. 8°. Price 2s. 6d.

Naval and Military Despatches Relating to Operations in the War. Part 2. November, 1914, to June, 1915. . . . 1915. 91-293 p. 8°. Price six pence. *Admiralty Office.*

Prohibitions of Export in Force in British India, the Self-Governing Dominions, Egypt, and Certain Other British Possessions. (Suppl. to Bd. of Trade Journal, October 14, 1915.) 1915. 86p. 8°. *Board of Trade.*

Prohibitions of Export in Force in the United Kingdom, in Allied Countries, and in Neutral Countries in Europe. (Supp. to Bd. of Trade Journal, October 28, 1915.) 1915. 90 p. 8°. *Board of Trade.*

Recruiting, Report on. By the Earl of Derby, H. G., Director General of Recruiting. 1916. 8 p. fol. [Cd. 8149.] Price 1d. *War Office.*

Retrenchment in the Public Expenditure, Final Report of the Committee on. 1916. 26 p. fol. [Cd. 8200.] Price 3d.

Sea-Borne Commerce of Germany, Statement of the Measures Adopted to Intercept the. 1916. 7 p. fol. [Cd. 8145.] Price 1d. Miscellaneous. No. 2. (1916.) *Foreign Office.*

Statistical Abstract Relating to British India from 1904-5 to 1913-14. Forty-ninth number. 1916. [Cd. 8157.] Price 1 s. 3 d. 1916. 285 p. 8°. *India Office.*

The Treatment of British Prisoners of War and Interned Civilians in Germany, Correspondence with the United States Ambassador Respecting. . . . 1915. 64 p. fol. [Cd. 8108.] Miscellaneous. No. 19 (1915). Price 7 d. *Foreign Office.*

Note: In continuation of "Miscellaneous No. 15 (1915)."

War Loans for the Small Investor, Copy of Report of the Committee on. 1916. 10 p. fol. [Cd. 8179.] Price 1½ d. *Treasury Department.*

ITALY

Raccolta di Disposizioni Legislative E Regalamentari Emanate dal R. Governo durante l'Attuale Conflitto internazionale per cura del Car. Sabino Rinella consigliere di Legazione, Fascicolo 1. Bollettino n. 457 bis. *Ministero degli Affari Esteri.*

SWEDEN

Sweden. Historical and Statistical Handbook by order of the Swedish Government edited by J. Guinchard. Second edition. English issue. First part. Land and people. Stockholm. 1914. 781 p. 8°.

—— Second part. Industries. Stockholm. 1914. 758 p. 8°.

UNION OF SOUTH AFRICA

Control and Management of Railways and Harbours. Memorandum by the Railway and Harbour Commissioners. 1915. 8 p. fol. *Railway and harbour Board.*

INDEX TO RECENT LITERATURE—BOOKS AND PERIODICALS

CONSTITUTIONAL LAW

Books

- Chimienti, P. S.* Diritto costituzionale e politico. Naples: Penella. 1915. Pp. viii, 290.
- Clement, W. H. P.* The law of the Canadian constitution. 3d ed. London: Sweet and Maxwell.
- Crombie, T. L.* Towards liberty; being a Britisher's view concerning India. Theosophical Pub. House.
- Flandin, E.* L'Allemagne en 1914; institutions, gouvernement, armée. Paris: Le Sourdier. 1915.
- Gibbons, H. A.* The foundation of the Ottoman empire. New York: Century.
- Griffis, William E.* The Mikado; institution and person. London: H. Milford. Pp. 354.
- Haines, L.* Your Congress. Washington: National Voters' League Asso'n.
- Harvey, R. S., and Bradford, E. W.* A manual of the federal trade commission. Washington: Byrne. 1916. Pp. 500.
- Lanessan, J. L. de.* L'Empire Germanique sous la direction de Bismarck et de Guillaume II. Paris: F. Alcan. 1915. Pp. 147.
- McFall, Robert James.* Railway monopoly and rate regulation. New York: Columbia Univ. Press. Pp. 223.
- Meyer, Eduard.* England. Seine staatl. und polit. Entwickl. u. d. Krieg gegen Deutschland. Stuttgart: Cotta'sche Buchh. 1916. Pp. xxiv, 213.
- Ramanathan, P.* Riots and martial law in Ceylon. St. Martin's Press. 1915. Pp. 314.
- Schroeder, T.* Free speech for radicals. Enl. ed. Riverside (Conn.): Hillacre Bookhouse.
- Vinogradoff, Paul.* Self-government in Russia. London: Constable. Pp. 124.

Articles in Periodicals

- Argentina.** Recent political evolution in Argentina. *F. L. Defrance.* Quart. Rev. Jan., 1916.
- Boards of Health.** Quasi-legislative powers of state boards of health. *U. G. Dubach.* Am. Pol. Sci. Rev. Feb., 1916.
- British Empire.** The integrity of the empire: the offer of Cyprus to Greece. *Sir Francis Piggott.* Nine. Cent. Jan., 1916.
- British Empire.** The reorganization of the empire: counsels of perfection. *Sir Francis Piggott.* Nine. Cent. March, 1916.

Budget. Constitutional aspects of a national budget system. *Charles W. Collins.* Yale Law Jour. March, 1916.

Cabinet Government. Cabinet government. *The Editor.* Edinb. Rev. Oct., 1915.

Clayton Law. The Clayton law—an imperfect supplement to the Sherman law. *Felix H. Levy.* Va. Law Rev. March, 1916.

Common Carriers. The exercise of constitutional powers by common carriers. *John B. Daish.* Yale Law Jour. Jan., 1916.

Confiscation. The road to confiscation. *Lee J. Vance.* Yale Law Jour. Feb., 1916.

Constitution. Rejuvenating the constitution. *Charles Zueblin.* Yale Law Jour. Jan., 1916.

Constitutional Law. Four fugitive cases from the realm of American constitutional law. *Jesse Turner.* Am. Law Rev. Nov.-Dec., 1915.

Constitutional Restraints. The need of constitutional restraints. *Lawrence Y. Sherman.* Ill. Law Rev. Jan., 1916.

Court Martial. A court martial fifty years ago. *William Renwick Riddell.* Am. Law Rev. Jan.-Feb., 1916.

Due Process. Federal courts and mob domination of state courts: Leo Frank's case. *Henry Schofield.* Ill. Law Rev. Feb., 1916.

Export Laws. United States v. Hvoslef: a constitutional source of national revenue impaired. *Clarence Norton Goodwin.* Harv. Law Rev. March, 1916.

Federal Trade Commission. The federal trade commission. *Charles W. Needham.* Col. Law Rev. March, 1916.

Federal Trade Commission. Procedure before the federal trade commission. *John B. Daish.* Col. Law Rev. Feb., 1916.

France. The cry for authority in France. *The Abbé Ernest Dinniet.* Nine. Cent. March, 1916.

Habeas Corpus. Suspension of the habeas corpus in strikes. *W. W. Grant, Jr.* Va. Law Rev. Jan., 1916.

Hours of Labor. Hours of labor and realism in constitutional law. *Felix Frankfurter.* Harv. Law Rev. Feb., 1916.

India. Lord Hardinge's viceroyalty. *A. Yusuf Ali.* Nine. Cent. March, 1916.

Interstate Commerce. Liability of common carriers under the act to regulate commerce. *John B. Daish.* Yale Law Jour. March, 1916.

Ireland. L'home rule irlandese. *Tomaso Perasssi.* Rib. di. Dir. Pub. VII, 4. 1915.

Jury. Is the common law relation of judge and jury subject to legislative change? *Thomas W. Shelton.* Va. Law Rev. Jan., 1916.

Legal State. Der Gesetzesstaat und die Empire. *Friedrich Tezner.* Archiv de Öffent. Rechts. XXXV, 3. 1916.

Local Government. The doctrine of an inherent right of local self-government. *Howard Lee McBain.* Col. Law Rev. March, 1916.

Martial Law. Qualified martial law, a legislative proposal, II. *Henry Winthrop Ballantine.* Mich. Law Rev. Jan., 1916.

Nationalism. The great American experiment. *Clifford Thorne.* Am. Law Rev. Jan.-Feb., 1916.

- Nationality.** The new British imperial law of nationality. *Richard W. Flourney, Jr.* Am. Jour. of Int. Law. Oct., 1915.
- New York Constitution.** The attempted revision of the state constitution of New York. *G. G. Benjamin.* Am. Pol. Sci. Rev., Feb., 1916.
- Pardons.** Executive, legislative, and judiciary in pardon. *James D. Barnett.* Am. Law Rev. Sept.-Oct., 1915.
- Porto Rico.** The relations between the United States and Porto Rico. Part I. *Pedro Capó-Rodríguez.* Am. Jour. of Int. Law. Oct., 1915.
- Preparedness.** National defense—constitutionality of pending legislation. *Nathan William MacChesney.* Penn. Law Rev. Feb.-March, 1916.
- Presence of Defendant.** Presence of the defendant at rendition of the verdict in felony cases. *Gullie B. Goldin.* Col. Law Rev. Jan., 1916.
- Privy Council.** The development of the privy council. *Arthur P. Poley.* Britan. Rev. Jan., 1916.
- Rate Regulation.** The United States supreme court and rate regulation. *Douglas D. Storey.* Penn. Law Rev. Jan., 1916.
- Right to Sell.** The right to refuse to sell. *Rome G. Brown.* Yale Law Jour. Jan., 1916.
- Right to Work.** The right to work for the state. *Thomas Reed Powell.* Col. Law Rev. Feb., 1916.
- Unconstitutional Law.** Back to the constitution. *Walter Clark.* Va. Law Rev. Dec., 1915.
- Vice President.** Our constitutional fifth wheel. *Rion McKissick.* Va. Law Rev. Dec., 1915.
- Women Suffrage.** Do women want the vote? *William M. Bray.* Atlan. Mo. April, 1916.
- Webb-Kenyon Act.** Unlawful possession of intoxicating liquors and the Webb-Kenyon act. *Lindsay Rogers.* Col. Law Rev. Jan., 1916.

INTERNATIONAL LAW AND DIPLOMACY

Books

- Anderson, C. C.* The war manual. London: Unwin.
- Andler, Charles.* "Frightfulness" in theory and practice as compared with Franco-British war usages. London: Unwin. Pp. 182.
- Andrews, L. C.* Fundamentals of military service. Philadelphia: Lippincott.
- Aulneau, J.* La Turquie et la guerre. Paris: F. Alcan. 1915.
- Baie, E.* Le droit des nationalités. Paris: Felix Alcan. 1915. Pp. 118.
- Baillod, Ch.* Pourquoi l'Allemagne devait faire la guerre. Paris: Perrin. 1915. Pp. xvi, 110.
- Baldwin, J. Mark.* France and the war. New York: Appleton.
- Bates, Lindell T.* Les traités fédéraux et la législation des états aux États-Unis. Paris: Lib. Gén. de Droit et de Jurisprudence. 1915. Pp. 228.
- Bigelow, J.* World peace. New York: Mitchell Kennerley.
- Boudin, Louis B.* Socialism and the war. New York: New Review Pub. Co.
- Bourgin, L.* Le militarisme allemand; ce qu'il est; pourquoi il faut le détruire. Paris: F. Alcan. 1915. Pp. 128.

- Brewer, Daniel Chauncey.* Rights and duties of neutrals. New York: Putnam. Pp. 260.
- Bullard, Arthur.* The diplomacy of the great war. New York: Macmillan. Pp. 344.
- Burns, C. D.* The morality of nations. New York: Putnam. Pp. 254.
- Carpenter, Edward.* The healing of nations and the hidden sources of their strife. New York: Scribner's.
- Cestre, G.* L'Angleterre de la guerre. Paris: Henri Didier. 1915. Pp. 352.
- Chesterton, G. K.* La barbarie de Berlin. Paris: 1915. Pp. 145.
- Crandall, Samuel B.* Treaties: their making and enforcement. Washintgon: Byrne. 1916. Pp. 650.
- Crow, Carl.* Japan and America. Robert McBride and Co. Pp. 316.
- Dampierre, J. A.* Allemagne et le droit des gens, d'après les sources allemandes et les archives du gouvernement. Paris: Berger-Levrault. 1915. Pp. 262.
- Daveluy, R.* La Lutte pour l'empire de la mer. Exposé et critique. Paris: A. Challamel. 1916. Pp. viii, 231.
- Destrée, J.* En Italie avant la guerre. 1914-1915. Pp. Bruxelles et Paris: G. Van Oest et Cie. 1915. Pp. xv, 172.
- Destrée, J.* Les socialistes et la guerre européenne 1914-1915. Paris: G. Van Oest et Cie. 1916. Pp. 136.
- Dickinson, G. Lowes, and others.* Towards a lasting settlement. New York: Macmillan. Pp. 216.
- Dillon, E. J.* From the Triple to the Quadruple Alliance. Why Italy went to war. London: Hodder and S. Pp. 254.
- Druowski, R.* La question polonaise. Paris: A. Colin. 1915.
- Edsall, Edward W.* The coming scrap of paper. London: Allen and U. Pp. 188.
- Fischer, Henry W.* The secret memoirs of Bertha Krupp. London: Cassell. Pp. 346.
- Flach, J.* La déviation de la justice en Allemagne. La force et le droit. Paris: Fischbacher. 1915. Pp. 20.
- Flint, Herbert.* An application of the teachings of Christ to the American-Japanese problem. Lawrence: Univ. of Kansas. Pp. 36.
- Freehoff, Joseph C.* America and the canal title. New York: Sully and Klein-geich.
- Gaillard, G.* Culture et kultur. Paris: Berger-Levrault. 1915. Pp. 246.
- Gardiner, A. G.* The war lords. New York: Dutton.
- Gould, B. A.* War thoughts of an optimist. New York: Dutton. Pp. 200.
- Grondys, L. H.* The Germans in Belgium. New York: Appleton.
- Gruet, P. L.* Les réquisitions militaires. Paris: F. Alcan. 1915.
- Grumbach, S.* Das Schicksal Elsass-Lothringens. Neuchâtel: Delachaux and Niestlé. 1915. Pp. 142.
- Gueshoff, I. E.* The Balkan league. London: Murry. Pp. 162.
- Guirand, F.* Les livres diplomatiques des nations belligérantes analysés et commentés. Paris: Larousse. 1915. Pp. 88.
- Guyot, Y.* Les causes et les conséquences de la guerre. Paris: F. Alcan. 1915. Pp. 416.
- Hannah, Ian C.* Arms and the map. New York: G. Arnold Shaw.

- Hayward, Charles W.* What is diplomacy? London: Grant Richards.
- Herrick, Robert.* The world decision. Boston: Houghton Mifflin.
- Jacques, P.* Les sources du conflit européen de 1914, ou Guillaume II responsable. 2^e éd. Paris: Roussel. 1915. Pp. 320.
- Jordan, D. S.* Ways to lasting peace. Indianapolis: Bobbs-Merrill.
- Lair, M.* L'impérialisme allemand. Paris: A. Colin. 1915.
- Lawson, W. R.* British war finance, 1914-1915. London: Constable. 2d ed.
- Lincoln, I. T. T.* Revelations of an international spy. Robert M. McBride and Co. Pp. 323.
- McClellan, George B.* The heel of war. New York: Dillingham. Pp. 177
- McGuire, James K.* What could Germany do for Ireland? New York: Wolfe Tone Co.
- Manning, W. R.* Early diplomatic relations between the United States and Mexico. Baltimore: Johns Hopkins Press.
- Marshall, Henry Rutgers.* War and the ideal of peace. A study of those characteristics of men that result in war, and of the means by which they may be controlled. London: Unwin. Pp. 244.
- Meinecke, F.* The warfare of a nation. Worcester (Mass.): Davis Press.
- Muller, Julius.* The A B C of national defense. New York: Dutton.
- Natesan, G. A.* The Indian review warbook. Madras (India): G. A. Natesan and Co.
- Ngaosiang-Tchou.* Le régime des capitulations et la réforme constitutionnelle en Chine. Cambridge. 1915. Pp. viii, 230.
- Orth, S. P.* The imperial impulse. New York: Century. Pp. 234.
- Palmer, John McAuley.* An army of the people. New York: Putnam. Pp. 158.
- Patterson, J. M.* The note book of a neutral. New York: Duffield. Pp. 95.
- Lord Courtney of Penwith.* Nationalism and war in the near East. London: H. Milford. Pp. 460.
- Phocas-Gosmetatos, S. P.* Au lendemain des guerres balkaniques. Paris: Payot. 1915.
- Piggott, Francis.* The neutral merchant. London: Univ. of Lond. Press. Pp. 128.
- Pitt, W. O.* Italy and the unholy alliance. New York: Dutton. Pp. 224.
- Plowden-Wardlaw, James.* The test of war. London: R. Scott. Pp. 202.
- Pons, A.* La guerre et l'ame française. Paris: Bloud et Gay. 1915. Pp. 263.
- Porter, R. P.* Japan, the new world power. London: Oxford Univ. Press.
- Powell, Alexander.* Vive la France! New York: Scribner's. Pp. 254.
- Pratt, E. A.* The rise of rail power in war and conquest. London: King.
- Pyke, H. Reason.* The law of contraband of war. London: H. Milford. Pp. 330.
- Rankin, Mary T.* Arbitration and conciliation in Australasia. London: Allen and U. Pp. 192.
- Reventlow, Ernst zu.* Deutschlands auswärt. Politik 1888-1914. 3., vollst. neubearb. Aufl. Berlin: Mittler. 1916. Pp. xx, 480.
- Richards, E. G.* Nationalism in a nutshell. New York: Broadway Pub. Co.
- Ridder, Herman.* Hyphenations. New York: Max Schmetterling.

- Ritter, W. E.* War, science, and civilization. Boston: Sherman, French.
- Robertson, J. M.* War and civilization. An open letter to a Swedish professor. London: Allen and U. Pp. 160.
- Roosevelt, Theodore.* Fear God and take your own part. New York: Doran. Pp. 414.
- Rösch, Adolf.* Der Kulturkampf in Hohenzollern. Freiburg: Herdersche Verh. 1916. Pp. 128.
- Russell, B.* Justice in war-time. Chicago: Open Court Pub. Co. Pp. 243.
- Sabatier, Paul.* A Frenchman's thoughts on the war. New York: Scribner's. Pp. 164.
- Sarolea, Charles.* The curse of the Hohenzollern. London: Allen and U. Pp. 102.
- Sarolea, Charles.* Great Russia: her achievement and promise. Alfred A. Knopf. Pp. 252.
- Sarolea, Charles.* The murder of nurse Cavell. London: Allen and U. Pp. 80.
- Schiemann, Th.* Die letzten Etappen zum Weltkrieg. Berlin: Reimer. 1915. Pp. iv, 352.
- Sewall, May Wright.* Women, world war and permanent peace. San Francisco: John J. Newbegin. Pp. 206.
- Sherrill, C. H.* Modernizing the Monroe Doctrine. Boston: Houghton Mifflin.
- Skaggs, William H.* German conspiracies in America. From an American point of view. London: Unwin. Pp. 360.
- Spaulding, John A.* The warfare of a nation. Worcester (Mass.): Davis Press. Pp. 60.
- Stephens, K.* The mastering of Mexico. New York: Macmillan.
- Stevenson, R. T.* Missions versus militarism. New York: Abingdon.
- Strunsky, Simeon.* Smith on preparedness. Brooklyn: B. W. Pub. Co. Pp. 48.
- Thayer, W. R.* Germany vs. civilization. Boston: Houghton Mifflin. Pp. 238.
- Toland, Edward D.* The aftermath of battle. New York: Macmillan. Pp. 175.
- Usher, R. G.* The challenge of the future. Boston: Houghton Mifflin. R. 238.
- Wambach, G.* Le dossier de la guerre. Paris: Fischbacher. Pp. xiv, 262.
- Washburn, Stanley.* The Russian campaign. New York: Scribner's. Pp. 348.
- Waxweiler, Emile.* Belgium, neutral and loyal. New York: Putnam. Pp. 338.
- Wile, Frederic William.* "Who's who in Hunland." London: Simpkin. Pp. 154.
- Wise, Jennings C.* Empire and armament. New York: Putnam.
- Woodhull, Maxwell Van Zandt.* West point in our next war. New York: Putnam.

ARTICLES IN PERIODICALS

- Alsace Lorraine.** La France et l'Alsace-Lorraine. *Henri Lichtenberger*. *La. Rev. Pol. Int.* Nov.-Déc., 1915.
- Alsace-Lorraine.** Le retour à la loi française en Alsace-Lorraine. *Rev. Pol. et Par.* 10 Fév. 1916.
- America.** America's obligations and opportunity. *George Burton Adams*. *Yale Rev.* April, 1916.
- Antwerp.** The truth about Antwerp. *Demetrius C. Boulger*. *N. Am. Rev.* Feb., 1916.
- Arbitration.** Internationale Schiedsgerichte und Einigungsämter. *W. Kulemann*. *Archiv. des Öffent. Rechts.* XXXV, 3. 1916.
- Arbitration.** The justiciability of international disputes. *Jesse S. Reeves*. *Am. Pol. Sci. Rev.* Feb., 1916.
- Asia.** The campaign in Western Asia. *H. G. Dwight*. *Yale Rev.* April, 1916.
- Austria and Hungary.** Österreichs und Ungarns Zollgemeinschaft. *Eugen von Philippovich*. *Zeits. für Pol.* IX, 1, 2. 1916.
- Austria-Hungary.** Autriche-Hongrie et France. (Réponse d'un Autrichien.) *La Rev. Pol. Int.* Nov.-Déc., 1915.
- Balkans.** Les chemins de fer balkaniques et leur rôle dans les origines de la guerre. *Joseph Thureau*. *Rev. Pol. et Par.* 10 Jan. 1916.
- Balkans.** Deutsche und österreichische Forschungs- und Bildungsarbeit auf dem Balkan. *Karl Dieterich*. *Zeits. für Pol.* IX, 1, 2. 1916.
- Belgium.** Der belgische Volkskrieg und Art. 1 und 2 der Haager Landkriegsordnung. *Karl Strupp*. *Zeits. für Völker.* IX, 3. 1916.
- Belgium.** Belgium and pan-Netherlandism. *Raymond College de Weerdt*. *Contemp. Rev.* March, 1916.
- Belgium.** Die Neutralität Belgiens und die Festungsverträge. *Josef Kohler*. *Zeits. für Völkerr.* IX, 3. 1916.
- Blockades.** Some questions of international law in the European war. VIII. *Blockades.* *James W. Gardner*. *Am. Jour. of Int. Law.* Oct., 1915.
- British Empire.** The war and the problem of empire. *Sidney Low*. *Fort. Rev.* March, 1916.
- Canada.** Why Canada is at war. *A Canadian*. *Quart. Rev.* Jan., 1916.
- Central Control Board.** The work of the central control board. *Sir T. P. Whittaker*. *Contemp. Rev.* March, 1916.
- Conscription.** Military compulsion. *Ellis J. Griffith*. *Contemp. Rev.* Feb., 1916.
- Conscription.** Military compulsion: another view. *W. Llewellyn Williams*. *Contemp. Rev.* Feb., 1916.
- Consuls.** The British consular service. *Percy F. Martin*. *Brit. Rev.* Dec., 1915.
- Continuous Voyage.** The "continuous voyage" doctrine during the Civil War, and now. *Simeon E. Baldwin*. *Am. Jour. of Int. Law.* Oct., 1915.
- Contraband.** The essence of contraband. *T. Baty*. *Penn. Law Rev.* Feb., 1916.

Democracy. Democracy and the iron broom of war. An analysis and some proposals. *J. Ellis Barker*. *Nine. Cent.* Feb., 1916.

Democracy. Democratic control of foreign policy. *Gilbert Murray*. *Contemp. Rev.* Feb., 1916.

Democracy. Is democracy to blame? *Arthur A. Baumann*. *Fort. Rev.* March, 1916.

Denmark. The Danish agreement and the feeding of Germany. *Quart. Rev.* Jan., 1916.

Denmark. Denmark and the great war. *Geoffrey Pyke*. *Fort. Rev.* Jan., 1916.

Diplomacy. Thoughts on present diplomacy. *B. Branford and C. Brereton*. *Brit. Rev.* Oct., 1915.

England. The new outlook in Britannic affairs. *Ben. H. Morgan*. *Britan. Rev.* Jan., 1916.

Far East. Action and reaction in the far east. *E. Bruce Mitford*. *Fort. Rev.* Jan., 1916.

Far East. China, Japan and the hundred days. *E. Bruce Mitford*. *Atlan. Mo.* Feb., 1916.

Far East. Factors in the problems of the near east—Russia and Turkey. *J. A. R. Marriott*. *Fort. Rev.* March, 1916.

Foreign Policy. Common sense in foreign policy. *W. R. Shepherd*. *Pol. Sci. Quart.* March, 1916.

France. M. Briand's cabinet and its problems. *Charles Dawborn*. *Fort. Rev.* Jan., 1916.

Franco-Spanish Treaty. Le traité franco-espagnol du 27 novembre 1912, concernant le Maroc. *J. Basdevant*. *Rev. Gén. de Droit Int. Pub.* Nov.-Déc., 1916.

Freedom of Press. La régime juridique de la presse en Angleterre pendant la guerre. *Gaston Jeze*. *Rev. du Droit Pub. et de la Sci. Pol.* Oct.-Nov.-Déc., 1915.

German Propaganda. German propaganda in the United States. *Gustavus Ohlinger*. *Atlan. Mo.* April, 1916.

Germans in America. Les manoeuvres allemandes aux États-Unis—Herr. Dernburg u. Co. *V. H.* *Rev. des Pol. Sci.* 15 Fév. 1916.

Germany. L' "héroïque" Allemagne. *Arthur Chuquet*. *Rev. des Sci. Pol.* 15 Fév., 1916.

Germany. Our understanding the mind of Germany. *John Dewey*. *Atlan. Mo.* Feb., 1916.

Germany and Austria. Deutschland und Österreich-Ungarn. *Ottocar Weber*. *Zeits. für Pol.* IX, 1, 2. 1916.

India. India and the war. *Sidney Brooks*. *N. Am. Rev.* April, 1916.

International Law. The international assimilation of law—its needs and its possibilities from an American standpoint. *John H. Wigmore*. *Ill. Law Rev.* Jan., 1916.

International Law. International realities. *Philip Marshall Brown*. *N. Am. Rev.* April, 1916.

International Law. Völkerrecht für weitere Kreise. *Knorr*. *Zeits. für Völkerkerr.* IX, 3. 1916.

- Ireland. Ireland during the war. *J. M. Howe*. *Contemp. Rev.* March, 1916.
- Ireland. Recruiting in Ireland today. *James O. Hannay*. (*George A. Birmingham.*) *Nine. Cent.* Jan., 1916.
- Japan. La politique du Japon pendant la première année de la guerre européenne. *Maurice Courant*. *Rev. des Sci. Pol.* 15 Fév. 1916.
- Latin America. Our Latin-American policy. *Richard Olney*. *N. Am. Rev.* Feb., 1916.
- Maritime War. La guerre sur mer. *Paul Cloarec*. *Rev. des Sci. Pol.* 15 Fév. 1916.
- Monroe Doctrine. The Monroe Doctrine and the great war. *Moreton Fremén*. *Nine. Cent.* Feb., 1916.
- Monroe Doctrine. Pacific and Asiatic doctrines akin to the Monroe doctrine. *Albert Bushnell Hart*. *Am. Jour. of Int. Law.* Oct., 1915.
- Nationality. Language and the sentiment of nationality. *Carl Darling Buck*. *Am. Pol. Sci. Rev.* Feb., 1916.
- Near East. British diplomacy and the near east. *Quart. Rev.* Jan., 1916.
- Nicaraguan Claims. The Nicaraguan mixed claims commission. *Otto Schoenrich*. *Am. Jour. of Int. Law.* Oct., 1915.
- Occupation. Die völkerrechtliche okkupation. *H. Gellmann*. *Zeits. f. d. Privat- und Öffentliche Recht.* 1915. Nos. 2 and 4.
- Patents. The war and our patent laws. *William Macomber*. *Yale Law Jour.* March, 1916.
- Peace. The crux of the peace problem. *William Jewett Tucker*. *Atlan. Mo.* April, 1916.
- Peace. The only way to lasting peace. *A. Shadwell*. *Nine. Cent.* Jan., 1916.
- Peace. Le problème de la paix. *L.-V. Birck*. *La Rev. Pol. Int.* Nov.-Déc., 1915.
- Persia. Persia and the Allies. *Dr. E. J. Dillon*. *Contemp. Rev.* March, 1916.
- Poland. La Pologne d'hier et de demain. *M. le Comte Charles Potulicki*. *La Rev. Pol. Int.* Nov.-Déc., 1915.
- Poland. Prussianism and the Poles. *J. H. Harley*. *Brit. Rev.* Oct., 1915.
- Preparedness. The administration's military policy. *Richard Stockton, Jr.* *N. Am. Rev.* Feb., 1916.
- Preparedness. Preparedness and democratic discipline. *George W. Alger*. *Atlan. Mo.* April, 1916.
- Press Censorship. The censorship and its effects. *Quart. Rev.* Jan., 1916.
- Prisoners of War. Die Kriegsgefangenen und das international Recht. *Julius von Wlassics*. *Zeits. für Völkerr.* IX, 3. 1916.
- Prize. Les tribunaux de prises en grece. Leur constitution, leur fonctionnement et leur jurisprudence. *St. P. Sèfériadès*. *Rev. Gén. de Droit Int. Pub.* Jan.-Fév., 1916.
- Protection of Citizens. Protection of American citizens. *David Jayne Hill*. *N. Am. Rev.* March, 1916.
- Recruitment. L'Angleterre et le recrutement. *C. Cestre*. *Rev. Pol. et Par.* 10 Fév., 1916.

Russia. Le budget et les finances de guerre de la Russie. *M. Lawwick*. Rev. Pol. et Par. 10 Jan., 1916.

Ruthenians. The Ukrainians (Ruthenians) and the war. *Bedwin Sands*. Contemp. Rev. March, 1916.

South Africa. South Africa and her German neighbor. *R. C. Hawkin*. Quart. Rev. Jan., 1916.

Suez Canal. The problem at Suez. *Charles Johnston*. N. Am. Rev. Feb., 1916.

Treaties. Die Staatsverträge der deutschen Bundesstaaten über die Bestrafung von Forstfreveln und ähnlichen Vergehungen. *Karl Neumeyer*. Zeits. für Völkerr. IX, 3. 1916.

Turkey. Les capitulations Ottomanes. *Kémal Hilmy*. La Rev. Pol. Int. Nov.-Déc., 1915.

War. America and the war. *Charles Hobhouse*. Contemp. Rev. March, 1916.

War. The British government and war. Quart. Rev. Jan., 1916.

War. Le coût de la guerre. *Fernand Faure*. Rev. Pol. et Par. 10 Jan., 1916.

War. The crown colonies and the war. *Sir Charles Bruce*. Edinb. Rev. Oct., 1915.

War. Democracy, diplomacy and war. *J. A. R. Marriott*. Edinb. Rev. Oct., 1915.

War. The desecration of French monuments. *Edmund Gosse*. Edinb. Rev., Oct., 1915.

War. La guerre actuelle et le droit des gens. *A. Pillet*. Rev. Gén. de Droit Int. Pub. Jan.-Fév., 1916.

War. La guerre: responsabilités personnelles et causes fatales. *L. Morel*. Rev. des Sci. Pol. 15 Fév., 1916.

War. The humanity of modern warfare. *David Hannay*. Edinb. Rev. Oct., 1915.

War. A philosopher's view of the war. *Count Hermann Keyserling*. Atlan. Mo. Feb., 1916.

War. The shaping of mid-Europe. *H. N. Brailsford*. Contemp. Rev. March, 1916.

War. Über den Einfluss des Krieges auf Lieferungsverträge. *Karl Adler*. Zeits. f. d. Privat- und Öffentliche Recht. 1916. Nos. 1 and 2.

War. The war and American democracy. *Wilbur C. Abbott*. Yale Rev. April, 1916.

War. The war and the national temper: a year later. *Sir W. Ryland Adkins*. Contemp. Rev. March, 1916.

War. War relief and war service. *M. G. Fawcett*. Quart. Rev. Jan., 1916.

War. The root causes of the great war. Britan. Rev. July, 1915.

War. Some phases of the war situation. *Sir George E. Foster*. Britan. Rev. Jan., 1916.

War Profits. Die Besteuerung der Kriegsgewinne. *Ludwig Ebert*. Annalen des Deutschen Reichs, No. 8, 9, 1915.

Water Rights. Zur Lehre des internationalen Wasserrechts. *Dr. Lederle*. Annalen des Deutschen Reichs. Nos. 8, 9, 1915.

War Profits. Das Problem der Veranlagungstechnik im Hinblick auf die Besteuerung der Kriegsgewinne. *L. Buck.* Annalen des Deutschen Reichs, No. 8, 9, 1915.

Wilson. President Wilson and his message. *James Davenport Whelpley.* Fort. Rev. Jan., 1916.

Wilson. President Wilson in the toils. *James Davenport Whelpley.* Fort. Rev. March, 1916.

JURISPRUDENCE

Books

Baty, T. Vicarious liability. London: H. Milford. Pp. 244.

Brend, William A. An enquiry into the statistics of deaths from violence and unnatural causes in the United Kingdom. London: Griffin. Pp. 84.

Cohen, Julius Henry. Law and order in industry. New York: Macmillan.

Commons, J. R., and Andrews, J. B. Principles of labor legislation. New York: Harper.

Field, Jessie, and Nearing, Scott. Community civics. New York: Macmillan. Pp. 270.

Hood, W. R. Digest of state laws relating to public education. Washington: Government Print. Off.

Lincoln, C. Z. The civil law and the church. New York: Abingdon.

Munro, W. B. Principles and methods of municipal administration. New York: Macmillan.

Nolen, John. City planning. New York: Appleton.

Salandra, A. Politica e legislazione; saggiraccolti. Bari: Laterza. 1915. Pp. 500.

Schaeffer, Henry. The social legislation of the primitive Semites. New York: Oxford Univ. Press.

Wallis, L. The struggle for justice. Chicago: Univ. Press.

Zueblin, Charles. American municipal progress. New York: Macmillan. Pp. 522.

Articles in Periodicals

Babylonian Law. Les lois des Babyloniens et des Hébreux. *René de Kéralain.* Rev. Gén. du Droit, de la Légis. et de la Juris. Nov.-Déc., 1915.

Belgian Courts. Les cours de justice et la procedure en Belgique. *Jean Fischbach.* Jurid. Rev. Dec., 1915.

Civil Rights. Sul concetto pubblicistico di azione civile. *Attilio Gaglio.* Riv. di Dir. Pub. VII, 4. 1915.

Corporations. The personality of associations. *Harold J. Laski.* Harv. Law Rev. Feb., 1916.

Crime. Propensity to crime. *Ignacio Villamor.* Jour. of Crim. Law and Crim. Jan., 1916.

Crime. Schuld und Haftung (im römischen Recht). *Hans Steiner.* Zeits. f. d. Privat-und Öffentliche Recht. 1916. Nos. 1 and 2.

Criminal Law. A sketch of the early development of English criminal law as displayed in Anglo-Saxon law. *Hampton L. Carson.* Jour. of Crim. Law and Crim. Jan., 1916.

- Criminal Responsibility.** Insanity and criminal responsibility. *Edwin R. Keedy.* Jour. of Crim. Law and Crim. Jan., 1916.
- Criminals.** The criminal—why is he, and what we do to him. *George T. Page.* Jour. of Crim. Law and Crim. Jan., 1916.
- Criminology.** Fines and community protection in Springfield, Illinois. *Zenas L. Potter.* Jour. of Crim. Law and Crim. Jan., 1916.
- Criminology.** Indeterminate sentence, release on parole and pardon. *Edward Lindsey.* Jour. of Crim. Law and Crim. March, 1916.
- Criminology.** The individual delinquent. *Herman C. Stevens.* Jour. of Crim. Law and Crim. March, 1916.
- Criminology.** Intelligence and delinquency. A study of two hundred and fifteen cases. *J. Harold Williams.* Jour. of Crim. Law and Crim. Jan., 1916.
- Criminology.** The operation of the indeterminate sentence and parole law. *Amos M. Butler.* Jour. of Crim. Law and Crim. March, 1916.
- Decisions.** The welter of decisions. *Edward H. Warren.* Ill. Law Rev. Feb., 1916.
- Democracy.** Democracy and law. *Charles M. Hough.* Am. Law Rev. Nov.-Dec., 1915.
- Democracy.** Land tenure reform and democracy. *George E. Putnam.* Pol. Sci. Quart. March, 1916.
- Domestic Relations.** Individual interests in the domestic relations. *Roscoe Pound.* Mich. Law Rev. Jan., 1916.
- Equity.** The origin of English equity. *George Burton Adams.* Col. Law Rev. Feb., 1916.
- French Criminal Procedure.** Criminal procedure in France. *James W. Garner.* Yale Law Jour. Feb., 1916.
- Jails.** Model jail architecture. *W. C. Zimmerman.* Jour. of Crim. Law and Crim. Jan., 1916.
- Jewish Law.** The recognition of Jewish law in private international jurisprudence. *Norman Bentwich.* Am. Law Rev. Sept.-Oct., 1915.
- Judicial Procedure.** The law and equity reform bill. *A. L. Sanborn.* Yale Law Jour. Jan., 1916.
- Judicial Procedure.** The Pennsylvania practice act of 1915. *David Werner Amram.* Penn. Law Rev. Jan., 1916.
- Judicial Procedure.** A plea for the establishment in Mississippi of a modern unified court. *Sydney Smith.* Am. Bar Asso'n Jour. Jan., 1916.
- Judicial Procedure.** Vesting in the courts the power to make rules relating to pleading and practice. *Am. Bar Asso'n Jour.* Jan., 1916.
- Jurisprudence.** Jurisprudence: development and practical vocation. *James D. Andrews.* Yale Law Jour. Feb., 1916.
- Justice.** An inquiry concerning justice. *Floyd R. Mechem.* Mich. Law Rev. March, 1916.
- Juvenile Crime.** Juvenile delinquency in small cities. *E. W. Burgess.* Jour. of Crim. Law and Crim. Jan., 1916.
- Law.** The living law. *Louis D. Brandeis.* Ill. Law Rev. Feb., 1916.
- Law.** La "notion de droit" en France au XIX^e siècle. *J. Bonnetcase.* Rev. Gén. du Droit, de la Légis. et de la Juris. Nov.-Dec., 1915.

Lawyers. Early courts and lawyers. *Oscar Hallam.* *Yale Law Jour.* March, 1916.

Lawyers. The lawyer and democracy. *C. G. Ogburn.* *Am. Law Rev.* Sept.-Oct., 1915.

Lawyers. Renaissance lawyers. *John M. Zane.* *Ill. Law Rev.* March, 1916.

Legal Philosophy. Ueber kritische und metaphysische Rechtsphilosophie. *Julius Binder.* *Archiv für Rechts- und Wirtschaftsphil.* Jan., 1916.

Legal Procedure. A legislative indictment of the courts. *J. B. Winslow.* *Harv. Law Rev.*, Feb., 1916.

Legal Procedure. The Michigan judicature act of 1915. *Edson R. Sutherland.* *Mich. Law Rev.* Feb.-March, 1916.

Legal Procedure. New York's simplified act. *Fred L. Gross.* *Yale Law Jour.* March, 1916.

Legal Procedure. Studies in English civil procedure. III. The county courts. *Samuel Rosenbaum.* *Penn. Law Rev.* Feb.-March, 1916.

Legislation. Principles of legislation. *Ernst Freund.* *Am. Pol. Sci. Rev.* Feb., 1916.

Marriage. Judicial tendencies in impairment of the marriage relation. *Henry T. Blake and Henry Schofield.* *Ill. Law Rev.* March, 1916.

Parole. The paroling of prisoners sentenced to county jails with special reference to Wisconsin. *J. L. Gillin.* *Jour. of Crim. Law and Crim.* Jan., 1916.

Philippines. Courts in the Philippines—old, new. *David Cecil Johnson.* *Mich. Law Rev.* Feb., 1916.

Prison Reform. Prison reform. *Joseph P. Byers.* *Jour. of Crim. and Crim.* March, 1916.

Property. Protection of industrial property. *H. A. Toulmin, Jr.* *Va. Law Rev.* Dec., 1915.

Punishment. Punitive pain and humiliation. *Marquis Eaton.* *Jour. of Crim. Law and Crim.* March, 1916.

Religious Meetings. Disturbance of religious meetings in the American law. *Carl Zollman.* *Am. Law Rev.* Nov.-Dec., 1915.

Requisitions. Notes de jurisprudence: I. Droit à réparation pour réquisitions faites, par l'ennemi. *M. A. Henry.* *Rev. du Droit Pub. et de la Sci. Pol.* Oct.-Nov.-Dec., 1915.

Rights and Duties. The correspondence of duties and rights. *Henry T. Terry.* *Yale Law Jour.* Jan., 1916.

Tolstoy. Tolstoy's doctrine of law. *M. S. Stanoyevich.* *Am. Law Rev.* Jan.-Feb., 1916.

MUNICIPAL GOVERNMENT

Books

Farrington, Frank. Community development. New York: Ronald Press.

Robinson, C. M. City planning. New York: Putnam.

Elliott, Edward. American government and majority rule. Princeton: Univ. Press. Pp. 175.

Wright, Henry C. The American city. Chicago: McClurg. Pp. 178.

Articles in Periodicals

Baker. Mayor Baker's administration in Cleveland. *C. C. Arbuthnot.* Nat. Munic. Rev. April, 1916.

Blankenburg. The Blankenburg administration in Philadelphia. *Charles Francis Jenkins.* Nat. Munic. Rev. April, 1916.

City Manager. Professional standards and professional ethics in the new profession of city manager. *R. S. Childs and others.* Nat. Munic. Rev. April, 1916.

Home Rule. The progress of municipal home rule in Ohio. *Mayo Fesler.* Nat. Munic. Rev. April, 1916.

Municipal Home Rule. Charter amending powers of cities under Michigan home-rule legislation. *Robert E. Jacobson.* Mich. Law Rev. Feb., 1916.

Proportional Representation. Proportional representation: a fundamental or a fad. *Herman G. James.* Nat. Munic. Rev. April, 1916.

Salaries. Standardization of salaries in American cities. *William C. Beyer.* Nat. Munic. Rev. April, 1916.

Statistics. Comparative statistics of British cities. *Le Grand Powers.* Nat. Munic. Rev. April, 1916.

MISCELLANEOUS

Books

Angell, Norman. Social progress and the Darwinian theory. New York: Putnam. Pp. 417.

Benton, J. H. Voting in the field. Boston: W. B. Clarke.

Bristol, L. M. Social adaptation. Cambridge: Harvard Univ. Press.

Carlyle, R. W. and A. J. A history of mediaeval political theory in the West. Vol. III. Political theory from the tenth century to the thirteenth. London: Blackwood. Pp. 223.

Castle, Jr., W. R. Wake up, America. New York: Dodd, Mead.

Chesterton, Gilbert K. The crimes of England. New York: John Lane.

Chuguët, A. De Frédéric II à Guillaume II. Paris: E. de Boccard. 1915. Pp. 375.

Cubberley, E. P. Public school administration. Boston: Houghton Mifflin.

Fowler, Charles N. The national issues of 1916. Pub. by author. Pp. 435.

Goodsell, Willystine. A history of the family as a social and educational institution. New York: Macmillan. Pp. 588.

Hauser, H. Méthodes allemandes d'expansion économique. Paris: A. Colin.

Hill, H. W. The new public health. New York: Macmillan.

Hunter, Robert. Violence and the labour movement. London: Routledge. Pp. 407.

Huntington, Ellsworth. Civilization and climate. New Haven: Yale Univ. Press. Pp. 333.

Hyndman, H. M. The future of democracy. New York: Scribner's.

Jennings, E. The people and their property. New York: Broadway Pub. Co.

Johnson, Owen. The spirit of France. Boston: Little, Brown. Pp. 256.

Journal of the national institute of social sciences. New York: The Alexander Press.

Kelly, Marshall. Carlyle and the war. Chicago: Open Court Pub. Co.

Larnaude, F. Les sciences juridiques et politiques. Paris: Larousse. 1915. Pp. 80.

Marvin, F. S. The unity of Western civilization. New York: Oxford Univ. Press.

Millioud, Maurice. The ruling caste and the frenzied trade in Germany. London: Constable. Pp. 158.

Moore, E. Dante's de Monarchia, with introduction on the political theory of Dante, by W. H. V. Reade. London: H. Milford.

Parsons, Elsie C. Social freedom. New York: Putnam.

Roman, C. V. American civilization and the negro. Philadelphia: F. A. Davis. Pp. 434.

Sarolea, Charles. Europe's debt to Russia. London: Heinemann. Pp. 262.

Scott, Wellington. Seventeen years in the underworld. New York: Abingdon.

Smith, Thomas F. A. What Germany thinks. New York: George H. Doran.

Spargo, John. Marxian socialism and religion. New York: Huebsch. Pp. 187.

Stevens, Edward Cleveland. English railways: their development and their relation to the state. New York: Dutton. Pp. 332.

Teele, Ray Palmer. Irrigation in the Unites States. New York: Appleton. Pp. 253.

Triana, S. P. The Pan-American financial conference in 1915. London: Heinemann. Pp. 140.

Wickware, F. G. The American year book for 1915. New York: Appleton.

Articles in Periodicals

Austria. The quintessence of Austria. *Henry Wickham Steed.* Edinb. Rev. Oct., 1915.

Austrian Political Theory. Der österreichische Staatsgedanke und das deutsche Volk. *Robert Sieger.* Zeits. für Pol. IX, 1, 2. 1916.

Church. Gli enti ecclesiastici nel diritto pubblico. *Arturo Carolo Jemolo.* Riv. di Dir. Pub. VII, 4. 1915.

Democracy. Current theories of democracy: An analysis of truths and errors. *W. H. Mallock.* Nine. Cent. Jan., 1916.

England. The need of a conference of Britannic societies. *Britan. Rev.* Oct., 1915.

European Idea. La crise de l'idée européenne. *Melchior Palágyi.* La Rev. Pol. Int. Nov.-Déc., 1915.

Government. The elemental functions of government. *W. W. Lucas.* Jurid. Rev. Dec., 1915.

Industrial Regulation. Development of government in industry. *Earl Dean Howard.* Ill. Law Rev. March, 1916.

Irrigation. Public service irrigation companies. *Samuel C. Wiel.* Col. Law Rev. Jan., 1916.

- Kultur.** Christianity v. Kultur. *Britan. Rev.* July, 1915.
- Latin America.** Strengthening of Latin America. *Charles H. Sherrill.* N. Am. Rev. March, 1916.
- Machiavelli.** Machiavelli: a study in statecraft. *John G. Vance.* Brit. Rev. Nov., 1915.
- Monarchy.** Das ständisch-monarchische Staatsrecht und die österreichische Gesamt-oder Länderstaatsidee. *Friedrich Tezner.* Zeits. f. d. Privat- und Öffentliche Recht. 1916. Nos. 1 and 2.
- Nationalism.** The national idea. *J. Holland Rose.* Contemp. Rev. March, 1916.
- Pan-America.** Pan-American monetary unity. *E. W. Kemmerer.* Pol. Sci. Quart. March, 1916.
- Patriotism.** Social training and patriotism in Germany and in England. *R. S. Nolan.* Nine. Cent. Feb., 1916.
- Political Authority.** Le fondement de l'autorité politique. *M. H. Berthelémy.* Rev. du Droit Pub. et de la Sci. Pol. Oct.-Nov.-Déc., 1915.
- Population.** Bevölkerungsprobleme. *Heinrich Pudor.* Annalen des Deutschen Reichs, No. 8, 9, 1915.
- Presidential Primary.** The presidential primary in Oregon. *James D. Barnett.* Pol. Sci. Quart. March, 1916.
- Prohibition.** Government and prohibition. *John Koren.* Atlan. Mo. April, 1916.
- Public Service.** Education and the public service. *Sir Harry H. Johnston.* Nine. Cent. Feb., 1916.
- Railroad Regulations.** Railroad regulation in Illinois and elsewhere. *Blewett Lee.* Ill. Law Rev. Jan., 1916.
- Railway Regulation.** Federal financial railway regulation. *William D. Ripley.* N. Am. Rev. April, 1916.
- Railway Valuation.** The federal valuation of railroads. *Morrell W. Gaines.* Yale Rev. April, 1916.
- Rousseau.** The return of Rousseau: a reply to Mr. W. H. Mallock. *Cecil Chesterton.* Nine. Cent. March, 1916.
- Russia.** The spirit of Russia. *H. Bailey.* Brit. Rev. Dec., 1915.
- Spencer.** Herbert Spencer's "postscript" to "the man vs. the state" (with comments by David Jayne Hill). *Forum.* Feb., 1916.
- Spencer.** Herbert Spencer's "the sins of legislators" (with comments by Harlan F. Stone). *Forum.* March, 1916.
- State.** Der Staat als sittliches Wesen. *A. Mendelssohn Bartholdy.* Archiv für Rechts- und Wirtschaftsphil. Jan., 1916.
- Tariff Commission.** The proposal for a tariff commission. *F. W. Taussig.* N. Am. Rev. Feb., 1916.
- Voltaire.** Voltaire and Frederick the Great. *Lytton Strachey.* Edinb. Rev. Oct., 1915.
- Vox Populi.** Vox populi. *The Earl of Cromer.* Nine. Cent. March, 1916.
- Wilson.** President Wilson's administration. *Winfield Storey.* Yale Rev. April, 1916.
- Woman's Suffrage.** Woman's suffrage in the city of Chicago. *E. W. Eckert.* Pol. Sci. Quart. March, 1916.

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THE POLITICAL THEORY OF THE DISRUPTION¹

HAROLD J. LASKI

I

"Of political principles," says a distinguished authority,² "whether they be those of order or of freedom, we must seek in religious and quasi-theological writings for the highest and most notable expressions." No one, in truth, will deny the accuracy of this claim for those ages before the Reformation transferred the centre of political authority from church to state. What is too rarely realised is the modernism of those writings in all save form. Just as the medieval state had to fight hard for relief from ecclesiastical trammels, so does its modern exclusiveness throw the burden of a kindred struggle upon its erstwhile rival. The church, intelligibly enough, is compelled to seek the protection of its liberties lest it become no more than the religious department of an otherwise secular society. The main problem, in fact, for the political theorist is still that which lies at the root of medieval conflict. What is the definition of sovereignty? Shall the nature and personality of those groups

¹ No adequate history of the secession of 1843 has yet been written. What exists is for the most part pietistic in form and content. Perhaps the least unsatisfactory work is that of R. Buchanan: *The Ten Years' Conflict*, Edinburgh, 1850. The Rev. W. Hanna's *Life of Chalmers*, Vol. IV, will be found to contain much material of value, though naturally of a biased and edifying kind.

² J. N. Figgis: *From Gerson to Grotius*, p. 6.

of which the state is so formidably one be regarded as in its gift to define? Can the state tolerate alongside itself churches which avow themselves *societates perfectae*, claiming exemption from its jurisdiction even when, as often enough, they traverse the field over which it ploughs? Is the state but one of many, or are those many but parts of itself, the one?

There has been no final answer to these questions: it is possible that there is no final answer. Yet the study of the problems they raise gives birth to certain thoughts which mold in vital fashion our theory of the state. They are old enough thoughts, have, indeed, not seldom been deemed dead and past praying for; yet, so one may urge, they speak with living tongues. At certain great crises in the history of the nineteenth century they have thundered with all the proud vigor of youth. A student of modern Ultramontanism will not fail to find its basis in the stirring phrases of an eleventh century pope; just as he will find set out the opposition to it in the stern words of a fifteenth century chancellor of Paris University. Strikingly medieval, too, is the political theory no less of the Oxford movement than of that *Kulturkampf* which sent a German prince a second time to Canossa. And in a piece of Scottish ecclesiastical history the familiar tones may without difficulty be detected.

II

On the eighteenth of May, 1843, Dr. Welsh, the moderator of the general assembly of the Established Church of Scotland took a course unique in the history of his office. He made no formal address. Instead, there came the announcement that as a protest against an illegal usurpation of the rights of the church, and in order to preserve that freedom of action essential to the assembly, two hundred and three of its members were compelled to sever their connexion with it.³ With a large number of lay and clerical followers he then withdrew to a hall that had been prepared nearby. Prayer was offered up; the moderatorship of the seceding members was offered to and accepted by Dr. Chal-

³ Buchanan, II, 594.

mers; and the assembly then proceeded to constitute itself the governing body of the Free Church of Scotland.⁴

To the adequate understanding of this striking event some brief survey of early Scottish ecclesiastical history from the time of Knox's invasion is necessary. Recognized as the State Church in 1567⁵ from the first a conflict of authority arose. The first general assembly had approved the Book of Discipline of the church, but the council, from the outset, was unwilling to sanction it.⁶ As a result, the general assembly proceeded to act as though this approval, having reference to an ecclesiastical matter, was unnecessary. The book was made an essential part of the church's doctrinal constitution; and from the first the conception of a *societas perfecta* was of decisive importance.⁷ On the threshold, therefore, of ecclesiastical history in Reformation Scotland a problem arises. For while the state never accorded the desired recognition, it is at least equally clear that the church was in no wise dismayed by that refusal. Jurisdiction, indeed, was awarded to it by the state in the same year;⁸ but in terms ominous of future discord. To "declaration" no objection could be raised; but the insertion of a power to "grant" clearly cut away the ground from under the feet of Knox's contention that the power of jurisdiction was inherent without parliamentary enactment.⁹ Yet, in a sense, the church's desire for the recognition of its complete spiritual powers may be said to have received its fulfilment in 1592, when it was declared that an act of supremacy over estates spiritual and temporal¹⁰ "shall nowise be prejudicial nor derogate anything to the privilege that God has given to the spiritual office-bearers in the Kirk, concerning the heads of religion . . . or any suchlike censures

⁴ Buchanan, II, 607.

⁵ Calderwood, II, 388-389. Innes: *Law of Creeds in Scotland*. I cannot too fully acknowledge my debt to this admirable book.

⁶ Innes, op. cit., p. 20.

⁷ As is apparent in Melville's famous sermon before James I. Cf. Innes, p. 21.

⁸ Acts of Parliament of Scotland, III, 24.

⁹ Knox: *History of Reformation*, p. 257, and cf. McCrie: *History of the Scottish Church*, p. 44.

¹⁰ 1584, c. 129. The so-called Black Acts, Calderwood, IV, 62-73.

specially grounded and having warrant of the word of God."¹¹ Here, at any rate, was the clear admission that in the ecclesiastical sphere the church possessed powers no less than divine; and it may not unjustly be assumed that when the state affixed civil punishment to ecclesiastical censure, it stamped those powers with its approval.¹²

What pain the church had to endure in the next century of its history it lies outside our province to discuss; for our purpose the next halting place is its relation to the Revolution settlement. An act of 1669 had asserted the royal supremacy over the church;¹³ this was rescinded,¹⁴ and another statute, passed simultaneously, adopted the Westminster Confession as part of the law.¹⁵ At the same time the abuse of lay patronage complained of from the outset—was abolished, and the right of ministerial appointment was practically vested in the full congregation.¹⁶

Clearly, there was much of gain in this settlement, though about its nature there has been strenuous debate. To Lord President Hope, for instance, the act of 1690 was the imposition of doctrine on the church by the state, and so the recognition of the latter's supremacy.¹⁷ But it is surely clear that what actually was done was to recognize the church practice without any discussion of the difficult principles involved;¹⁸ and even that silent and purposeful negligence did not pass uncriticized by the general assembly.¹⁹ Yet, whatever the attitude of the state, it is certain that the church did not conceive itself, either by this act, or in the four years' struggle over subscription to its formularies, to have surrendered any part of its title to independence.²⁰

¹¹ 1592, c. 116, Acts of Parliament of Scotland, III, 541, Calderwood, V, 162.

¹² 1593, c. 164.

¹³ Acts of Parliament of Scotland, VII, 554.

¹⁴ 1690, c. I.

¹⁵ 1690, c. 5.

¹⁶ McCrie, *op. cit.* p. 418.

¹⁷ See his judgment in the Auchterarder case, Robertson's Report, II, 13.

¹⁸ This is well brought out by Mr. Innes, *op. cit.*, p. 45.

¹⁹ Innes, *op. cit.*, p. 46.

²⁰ Buchanan, I, 136, cf. Hetherington: *History of Church of Scotland*, p. 555; and for some strenuous criticism of Williams' attitude of McCormick's *Life of Carstairs*, pp. 43-4.

The next great epoch in the history of the Scottish Church was, naturally, its connection with the act of union in 1707. So securely was it deemed to be settled that the commissioners appointed in 1705 to treat with the English Parliament were expressly excluded from dealing with the Scottish Church;²¹ and the act of security was deemed fundamental to the union. The act pledged the crown to the maintenance of the acts of 1690 and 1693 in terms as solemn as well may be;²² and it may reasonably be argued that parliament conceived itself as then laying down something very like a fundamental and irrevocable law.²³ These may, indeed, have been no more than the recognition of a specially solemn occasion; for it is certainly difficult otherwise to understand why in 1712 parliament should have restored that lay patronage which the act of 1690 abolished.²⁴ The measure was carried through with indecent haste by the Jacobite party, and a spirit of revenge seems to have been its chief motive.²⁵ From this time until almost the close of the eighteenth century the general assembly protested against the measure; but parliament could not be moved.²⁶

That such a course was a violation of the act of security is, of course, evident without argument; but the chief significance of the repeal lay rather in the future than in the past. "The British legislature," Macaulay told the house of commons,²⁷ "violated the articles of union, and made a change in the constitution of the Church of Scotland. From that change has flowed almost all the dissent now existing in Scotland. . . . year after year the general assembly protested against the violation but in vain; and from the act of 1712 undoubtedly flowed every secession and schism that has taken place in the Church of Scotland." This is not the exaggeration of rhetoric but the

²¹ McCrie, *op. cit.*, p. 440.

²² Mathieson, *Scotland and the Union*, p. 183; Innes, *op. cit.*, p. 58.

²³ See Sir H. W. Moncreiff: *Churches and Creeds*, p. 19.

²⁴ 10, Anne, c. 12.

²⁵ Woodrow's *Correspondence*, I, 77, 84. Carstares' *State Papers*, p. 82; Burnet, VI, 106-107.

²⁶ Innes, *op. cit.*, p. 60.

²⁷ *Speeches*, II, 180.

moderation of sober truth. For what the act of 1712 did, in the eyes at least of the church, was essentially to deal with a right fundamentally ecclesiastical in its nature and so to invade the church's own province. It became clear to the leaders of the church that so to be controlled was in fact to sacrifice the Divine Supremacy to which they laid claim. Christ could no longer be the Supreme Head of the Presbyterian Church of Scotland if that church allowed lay authority to contravene his commands. So that when it came to a choice between his headship and freedom on the one hand, and endowment on the other, they could not hesitate in their duty.

III

The disruption takes its immediate rise in an act of the general assembly in 1834.²⁸ There had been long signs in the church of a deep dissatisfaction with the establishment. It meant, so, at least, the voluntarists urged, enslavement to the civil power; and to the answer that the church had spiritual freedom the existence of civil patronage was everywhere deemed a sufficient response.²⁹ If voluntaryism was to be combated, some measure against intrusion must be taken; and it was upon the motion of Lord Moncrieff, himself a distinguished lawyer, that it was declared "a fundamental law of the church that no pastor shall be intruded on any congregation contrary to the will of the people."³⁰ Patronage, in fact, was not abolished; but, clearly, the need for congregational approval deprived it of its sting. It is important to note that not even among the opposition to the measure was any sort of objection urged against the competency of the general assembly to enact it.³¹

The challenge, however, was not long coming. Within six months of the decision of the general assembly, a vacancy occurred in the parish of Auchterarder in Perthshire. Lord Kinoull, the patron, made his presentation to a Mr. Robert Young

²⁸ Buchanan, I, 280 ff.

²⁹ *Id.*, I, 282.

³⁰ *Id.*, I, 293. The motion was carried by 184 votes to 138, *Id.*, I, p. 307.

³¹ *Id.*, I, p. 325.

and the congregation promptly rejected him by an overwhelming majority.³² The presbytery then took steps to carry out the veto law.³³

Lord Kinnoull was not long in deciding to contest his rights in the courts. Into the history of the struggle it is unnecessary to enter here in any detail; the merest outline of its progress must suffice.³⁴ The court of session refused to accept the defence of the presbytery that the rejection of a presentee for unfitness concerned only the ecclesiastical authorities, and laid it down that the church was dependent upon the state.³⁵ To this the general assembly replied almost immediately in a resolution which bound the church 'to assert and at all hazards defend' not only the freedom of the church from outside interference but also its determination to exact obedience to the veto law.³⁶ The consequence of this defiance was the Strathbogie cases. A presbytery, following the decision of the court of session, neglected the veto act of 1834 and was suspended by the general assembly. The court of session at once protected it;³⁷ and ordained that the vetoed minister should be received.³⁸ The presbytery of Auchterarder was condemned in damages to Lord Kinnoull and Mr. Robert Young;³⁹ a minority of the presbytery opposed to the veto act was declared to be capable of acting as the presbytery proper, and the majority was inhibited from any interference.⁴⁰ The rejected presentee was forced upon the presbytery;⁴¹ and the condemnation of the presbytery by the general assembly for disregard of the veto act was put on one side.⁴² Truly the

³² Buchanan, I, 399.

³³ *Id.*, I, 408.

³⁴ The reader will find full details in Buchanan and the cases noted below.

³⁵ The Auchterarder case, No. I, Robertson's report.

³⁶ Buchanan, II, 479.

³⁷ *Id.*, II, 284.

³⁸ 1840, 2, Dunlop, 585.

³⁹ 1840, 3, Dunlop, 282.

⁴⁰ 1841, 3, Dunlop, 778. This is the second Auchterarder case.

⁴¹ 1843, 5, Dunlop, 1010. This is the third Auchterarder case. I have not discussed the judgments of Brougham and Cottenham, L. C., in the House of Lords, as they add nothing to the Scottish opinions.

⁴² 1840, 3, D., 283.

outcome of Knox's nationalism had been different from the conception of its founder.⁴³

Attempted interference by statesmen proved of no avail.⁴⁴ Upon so fundamental an issue there could be no compromise, since it was her independence as a society that was at stake. Parliament would not surrender the position taken up by the court of session and the house of lords. "No government would recommend," Mr. Bruce told the house of commons,⁴⁵ "and no parliament would ever sanction the pretensions of the Church of Scotland, because if those claims were granted they would establish a spiritual tyranny worse and more intolerable than that of the Church of Rome from which they had been delivered." If it was less outspoken, the government, in the persons of Sir James Graham and Sir Robert Peel, was equally emphatic.⁴⁶ The assembly took the only step that lay in its power. It presented a formal claim of right in 1842⁴⁷ which set out the theory of its position. This refused, the adherents to that claim presented their protest in the following year,⁴⁸ and withdrew from the assembly to form the Free Church of Scotland.

IV

The party of which Dr. Chalmers was the distinguished leader had, whatever its deficiencies, the merit of maintaining a consistent and logical position. The church to them was a society itself no less perfect in form and constitution than that of the state. To the latter, indeed, they acknowledged deference in civil matters, "a submission," Chalmers himself said,⁴⁹ "which was unexcepted and entire." That to which they took so grave an objection was the claim laid down by the authorities of the state to an absolute jurisdiction over every department of civil-

⁴³ Cf. what Mr. Figgis has to say of this in his *Divine Right of Kings* (2d ed.) p. 193. I do not think he goes too far.

⁴⁴ Buchanan, II, 194.

⁴⁵ Hansard, 3d Series, Vol. 67, p. 442, March 8, 1843.

⁴⁶ Hansard, 3d Series, Vol. 67, pp. 382, 502. See also below.

⁴⁷ Buchanan, II, 663.

⁴⁸ Innes, op. cit., Appendix K.

⁴⁹ Hanna: *Life of Chalmers*, Vol. IV, p. 199.

ized life. They admitted, in brief, her sovereignty over her own domain; it was when she entered a field they held to be without her control that the challenge was flung down. "The free jurisdiction of the church in things spiritual, the Headship of Christ, the authority of his Bible as the great statute book not to be lorded over by any authority on earth, a deference to our own standards in all that is ecclesiastical . . . these are our principles."⁵⁰ To them, therefore, the hand which was laid upon the church was an unhallowed hand; for when it thus struck at the foundation of her life it insulted the word of God.

The position of the Free Church is not different from that advocated by all who have accepted the principles of the Presbyterian system. It is a state of which the sovereignty is vested in the general assembly. It acknowledges no superior in the field with which it is concerned. That sovereignty is sanctioned by a right which even in high prerogative times would have seemed to its adherents a thousand times more sacred than its kingly analogue.⁵¹ The sovereignty of the state over its own concerns is not denied; but its universality would never have been admitted. The distinction between the two societies must be maintained, otherwise the grossest absurdities would follow.⁵² So Chalmers can make his striking claim. "In things ecclesiastical we decide all," he told a London audience in 1838,⁵³ "some of these things may be done wrong, but still they are our majorities which do it. They are not, they cannot, be forced upon us from without. We own no head of the church but the Lord Jesus Christ. Whatever is done ecclesiastically is done by our ministers as acting in his name and in perfect submission to his authority . . . even the law of patronage, right or wrong, is in force not by the power of the state, but by the permission of the church, and with all its fancied omnipotence, has no other basis than that of our majorities to rest upon. It

⁵⁰ *Life of Chalmers*, loc. cit.

⁵¹ Cf. Figgis: *Divine Right of Kings*, Ed. 2, p. 267.

⁵² *Jus Divinum*, p. 42. Quoted in Figgis op. cit., p. 275.

⁵³ *Life of Chalmers*, Vol. IV, p. 54. Mr. Gladstone was present at and deeply impressed by these lectures. Morley (Pop. Ed.), I, 127.

should never be forgotten that in things ecclesiastical the highest power of our church is amenable to no higher power on earth for its decisions. It can exclude; it can deprive; it can depose at pleasure. External force might make an obnoxious individual the holder of a benefice; it could never make him a minister of the Church of Scotland. There is not one thing which the state can do to our independent and indestructible church but strip her of her temporalities. *Nec tamen consumebatur*—she would remain a church notwithstanding, as strong as ever in the props of her own moral and inherent greatness; and although shrivelled in all her dimensions by the moral injury inflicted on many thousands of her families, she would be at least as strong as ever in the reverence of her country's population. She was as much a church in her days of suffering, as in her days of outward security and triumph; when a wandering outcast with naught but the wandering breezes to play around her, and naught but the caves of the earth to shelter her, as when now admitted to the bowers of an establishment. The magistrate might withdraw his protection, and she cease to be an establishment any longer; but in all the high matters of sacred and spiritual jurisdiction she would be the same as before. With or without an establishment, she in these is the unfettered mistress of her doings. The king by himself or by his representative might be the spectator of our proceedings; but what Lord Chatham said of the poor man's house is true in all its parts of the church to which I have the honor to belong: 'In England every man's house is his castle; not that it is surrounded with walls and battlements; it may be a straw-built shed; every wind of heaven may whistle around it; every element of heaven may enter it; but the king cannot—the king dare not.'"

A more thorough-going rejection of the royal supremacy on the one hand, and the legal theory of parliamentary sovereignty on the other, could hardly be desired. It is clear that an invasion of the church's rights is not contemplated as possible. The provinces of church and state are so different that parliament could only interfere if the rights it touched originated with itself. Such a general theory of origin the adherents of Presbyterianism

strenuously repudiated. "Our right," Professor McGill told the general assembly of 1826,⁵⁴ "flows not from acts of parliament. I maintain the rights and powers of the Church of Scotland . . . to determine the qualifications of its members; that their right in this matter did not originate with parliament; that parliament left this right untouched and entire to the courts of this church—nay, that of this right it is not in the power of parliament to deprive them. . . . The religion of Scotland was previously embraced by the people on the authority of the word of God, before it was sanctioned by parliament." It is that the relation of church to state is, in this view, that of one power to another. Nor did Professor McGill stand alone in his opinion. When, in 1834, Lord Moncrieff considered the competency of the general assembly to enact the veto law, he repudiated the contention that any part of the ecclesiastical constitution except its establishment was derived from the civil power.⁵⁵ The establishment, indeed, Presbyterians regarded as no more than a fortunate accident.⁵⁶ They were even accustomed to the distinction between their own position and that of the Church of England. "The Scottish Establishment," said Chalmers in 1830,⁵⁷ "has one great advantage over that of England. It acknowledges no temporal head, and admits of no civil or parliamentary interference with its doctrine and discipline. The state helps to support it, but it has nothing to do with its ministrations." Nor did he shrink from the obvious conclusion to such a situation. "They may call it an *imperium in imperio*," he said thirteen years later,⁵⁸ "they may say we intrude upon the legitimate power of the civil courts or the civil law. It is no more an intrusion on the civil law than Christianity is an intrusion on the world." He resented the suggestion that the church was dependent upon the state. "We are not," he told the general

⁵⁴ Quoted in Moncrieff: *The Free Church Principle* (1883), p. 35.

⁵⁵ See Moncrieff: *The Free Church*, p. 37.

⁵⁶ Buchanan, I, 367.

⁵⁷ *Life*, III, 270.

⁵⁸ 16 March, 1843. Moncrieff, *op. cit.*, p. iii. The remark is all the more significant since it was made on the eve of the Disruption.

assembly of 1842,⁵⁹ "eating the bread of the state. When the state took us into connection with itself, which it did at the time of the union, it found us eating our own bread, and they solemnly pledged themselves to the guarantees or the conditions, on which we should be permitted to eat their bread in all time coming." To the church, clearly, the act of security was the conclusion of an alliance into which church and state entered upon equal terms. It was an alliance, as Lord Balfour of Burleigh pointed out,⁶⁰ "with the state as a state in its corporate capacity," the union for certain specified purposes of one body with another. But it certainly was not conceived by the church that the acceptance of an establishment was the recognition of civil supremacy. Otherwise, assuredly, it could not have been argued, as in the resolution of the general assembly of 1838 that,⁶¹ "her judicatories possess an exclusive jurisdiction founded on the word of God," which power ecclesiastical "flows immediately from God and the Mediator Jesus Christ."

Such, in essence, is the basis as well of the claim of right in 1842 as of the final protest in the following year. The one is a statement of the minimum the church can accept; the other is the explanation of how acceptance of that minimum has been denied. In ecclesiastical matters, the function of the civil courts was neither to adjudicate nor to inquire, but to assist and protect the liberties guaranteed to the church.⁶² The maintenance of those liberties is essential to its existence, since without them it cannot remain a true church. Were it to admit any greater power in the civil courts, it would be virtually admitting the supremacy of the sovereign; but this is impossible since only Jesus Christ can be its head. Not only, so the claim holds, can the admission not be made, but the state itself has admitted the rightness of the church's argument.⁶³ Already in 1842 the

⁵⁹ Moncrieff, *op. cit.*, p. 102.

⁶⁰ Hansard, 5th Series, Vol. 13, 12th Feb., 1913, p. 119.

⁶¹ Innes, *op. cit.*, p. 73.

⁶² Buchanan, II, 633.

⁶³ Buchanan, II, 634. "The above-mentioned doctrine and fundamental principle. . . . have been by diverse and repeated Acts of Parliament, recognized, ratified, and confirmed."

claim foreshadows the willingness of the church to suffer the loss of her temporalities rather than admit the legality of the courts' aggression.⁶⁴ The protest of the following year does no more than draw the obvious conclusion from this claim. An inherent superiority of the civil courts, an inhibition of the ordinances of the general assembly, the suspension or reduction of its censures, the determination of its membership, the supersession of a Presbyterian majority, all of these decisions of the court of session, "inconsistent with the freedom essential to the right constitution of a Church of Christ, and incompatible with the government which He, as the Head of his Church, hath therein appointed distinct from the civil magistrate"⁶⁵ must be repudiated. So that rightly to maintain their faith they must withdraw from a corrupted church that they may reject "interference with conscience, the dishonour done to Christ's crown, and the rejection of His sole and supreme authority as king in His Church."⁶⁶

It is worthy of remark that this is the position taken up by counsel for the church in the Auchterarder case. "If the call be shown to be a part of the law of the church," Mr. Rutherford argued before the court of session,⁶⁷ "it is necessarily a part of the law of the land—because the law of the church is recognized by the state; and, if the veto act, in regulating that call, has not exceeded the limits within which the legislature of the church is circumscribed, it is impossible in a civil court to deny the lawfulness of its enactments." From the standpoint of the church it is clear that this is theoretically unassailable. If the church has the right to regulate her own concerns she must have the right to regulate appointment of ministers. If, as a Rutherford of two centuries earlier argued,⁶⁸ "the Church be a perfect visible society, house, city, and kingdom, Jesus Christ in esse and operari; then the Magistrate, when he cometh to be Christian,

⁶⁴ Buchanan, II, 647.

⁶⁵ Buchanan, II, 649.

⁶⁶ Buchanan, II, 650.

⁶⁷ Robertson's Report, I, 356.

⁶⁸ Quoted in Figgis: *Divine Right of Kings*, p. 278.

to help and nourish the Church, as a father he cannot take away and pull the keys out of the hands of the stewards." The state admitted her law to be its law in the act of security. The only question, therefore, that called for decision was whether the principle of non-intrusion was ecclesiastical or not. If it was, then clearly it was not *ultra vires* the general assembly to enact it, and, unless the act of security were to be rendered nugatory, the civil court must uphold the church's plea. In that event, to remedy the church's wrongs does not lie with the civil court. "The question is," as Mr. Rutherford argued,⁶⁹ "whether an abuse by the Church of her legislative powers will justify the interposition of this court. It has been maintained on the other side that it will in all cases. I maintain the reverse of the proposition, that however competent it may be for the State, by the power of the legislature, to withdraw their recognition of a jurisdiction which is no longer exercised so as to warrant the continuance of the confidence originally imposed, it is not within your province." "In matters ecclesiastical," he said again,⁷⁰ "even if the Church acts unjustly, illegally, *ultra vires*, still the remedy does not lie with this court—nor can your lordships give redress by controlling the exercise of ecclesiastical functions when in the course of completing the pastoral relation." Mr. Bell, his junior counsel even went so far as to urge the court not to hazard its dignity "by pronouncing a judgment you cannot enforce."⁷¹

It is to be observed that the Presbyterian theory is not the assertion of a unique supremacy. It did not claim a sovereignty superior to that of the state. Rather, indeed, did it take especial care to explain the precise limitations of its demand. "He was ready to admit," Sir George Clerk told the House of Commons in 1842,⁷² "the Church of Scotland is ready to admit, that in all civil matters connected with that church the legislature is supreme. The Church of Scotland did not refuse to render unto

⁶⁹ Robertson, I, 382.

⁷⁰ Op. Cit., I, 383.

⁷¹ Op. Cit., I, 124.

⁷² Hansard, 3d Series, Vol. 35, pp. 575-81.

Caesar the things that were Caesar's, but it would not allow of an interference with its spiritual and ecclesiastical rights." Mr. Buchanan, the historian of the Disruption, and one of its leading figures, explained at length the difference between the two organizations. "It is," he wrote of the church,⁷³ "no rival power, to that of the state—its field is conscience; that of the state is person and property. The one deals with spiritual, the other with temporal things, and there is therefore not only no need, but no possibility of collision between the two, unless the one intrude into the other's domain." Mr. Fox Maule, who was the authorised spokesman of the general assembly in parliament,⁷⁴ went so far as to say that even a claim to mark out the boundaries between the civil and the ecclesiastical provinces he would repudiate "because it was fraught with danger to the religious as well as the civil liberties of the country."⁷⁵ "He was aware," he remarked,⁷⁶ "that it was difficult at all times to reconcile conflicting jurisdictions, but for one he would never admit that when two courts, equal by the law and by the constitution, independent of each other, came into conflict upon matters however trifling or however important, so that one assumed to itself the right to say that the other was wrong, there was no means of settling the dispute. As he read the constitution, it became Parliament, which was the supreme power, to interfere and decide between them."⁷⁷ The separation of the two powers is, finally, distinctly set forth by the claim of right in 1842. "And whereas," it states,⁷⁸ "this jurisdiction and government, since it regards only spiritual condition, rights, and privileges, doth not interfere with the jurisdiction of secular tribunals, whose determination as to all temporalities conferred by the state upon the church, and as to all civil consequences attached

⁷³ Buchanan, II, 25.

⁷⁴ Buchanan, II, 572.

⁷⁵ Hansard, 3d Series, Vol. 67, p. 356, March 7, 1843.

⁷⁶ Ibid., p. 367.

⁷⁷ Yet a doubt must be permitted whether the Free Church party would have accepted a hostile decision even of Parliament. Chalmers, certainly, had no such doubts of his position as to think of mediation.

⁷⁸ Buchanan, II, 634.

indeed, possible to find two, and perhaps three, different theories of the relations between church and state in the various judicial opinions upon the Auchterarder and its connected cases; but all of them, with a single exception, are traceable to one basic principle.⁹² The judges found a conflict between two societies—the church and the state. Which, they asked themselves, was to prevail? Was the state to be deemed inferior to the church, since the latter was grounded upon divine authority? “Such an argument” said Lord Mackenzie,⁹³ “can never be listened to here.” In general, the attitude of the court seemed to imply an acceptance of the argument used by the dean of faculty in his speech against the presbytery of Auchterarder. “What rights,” he asked⁹⁴ “or claims had any religious persuasion against the state before its establishment . . . when he (Mr. Whigham) described the establishment of the National Church as a compact . . . he took too favourable a view of the matter for the defenders. For any such compact implies the existence of two independent bodies, with previous independent authority and rights. But what rights had the Church of Scotland before its establishment to assert or surrender or concede?” He put forward, in fact, the concession theory of corporate personality.⁹⁵ There were no rights save those which the state chose to confer; and the Church of Scotland was merely a tolerated association until the act of security legalised its existence. This seems to have been the judicial attitude. Lord Gillies emphatically denied the possibility of looking upon the act of security as a compact. “I observe,” he said,⁹⁶ “that it is an improper term. There can be no compact, properly speaking, between the legislature and any other body in the state. Parliament, the king, and the three estates of the realm are omnipotent, and incapable of making a compact because they cannot be bound by it.” Even Lord Cockburn, in his dissenting judgment, based his decision rather

⁹² That of Lord Medwyn. See below.

⁹³ *Middleton v. Anderson*, 4 D., 1010.

⁹⁴ Robertson, I, 185.

⁹⁵ See my paper on the “Personality of Associations” in the *Harvard L. Review*, for February, 1916.

⁹⁶ Robertson II, 32.

on the supposed historic basis of the veto law than on the co-equality of church and state.⁹⁷ The lord president went even further in his unqualified approval of Erastian principles. The church, he held, "has no liberties which are acknowledged *suo jure*, or by any inherent or divine right, but as given and granted by the king or any of his predecessors. . . . The parliament is the temporal head of the church, from whose acts, and from whose acts alone, it exists as the national church, and from which alone it derives all its powers."⁹⁸ He would not for a moment admit that a conflict of jurisdiction between church and state might occur; for "an establishment can never possess an independent jurisdiction which can give rise to a conflict . . . it is wholly the creation of statute."⁹⁹ The general assembly has no powers, but only privileges.¹⁰⁰ It could not be a supreme legislature, for there could only be one such body in a state. Any other situation "would be irreconcilable with the existence of any judicial power in the country."¹⁰¹

To Lord Meadowbank the Church of Scotland seemed comparable to a corporation to which as an "inferior and subordinate department" of itself the state had given the right to make by-laws. But its power was limited; it was a statutory creation which could exercise only the powers of its founding act. "The civil magistrate," he said,¹⁰² "must have the authority to interpose the arm of the law against what then becomes an act of usurpation on the part of ecclesiastical power. Were it otherwise anarchy, confusion, and disaster must inevitably follow." So, too, did Lord Mackenzie urge the final supremacy of the legislature, though, very significantly, he admitted that a churchman might think differently. "The subjection of the assembly, to the state," he said,¹⁰³ "is not owing to any contract between

⁹⁷ Robertson II, 359.

⁹⁸ Robertson II, pp. 2, 4, 5, 10.

⁹⁹ Cuninghame v. Lainshawe, Clarke's Report of the Stewarton case, 1843, p. 53.

¹⁰⁰ Robertson, II, 23.

¹⁰¹ Loc. cit.

¹⁰² Robertson, II, 88.

¹⁰³ Robertson, II, 121.

church and state, but simply to the supreme power of the legislature, which every subject of this country must obey. . . . I repeat therefore that when the question is raised whether anything is illegal as being contrary to act of parliament, it is utterly vain to cite any act of the assembly as supporting it in any degree."

Here, of a certainty, was the material for ecclesiastical tragedy. The difficulty felt by the majority of the court is one that lies at the root of all discussions on sovereignty. Anarchy, so the lawyer conceives, must follow unless it be clearly laid down at the outset that beyond the decision of the courts as interpreted from acts of parliament there can be no question. It is not a problem of spheres of respective jurisdiction. The legislature of the state, the king in parliament, exercises an unlimited power.¹⁰⁴ If the legislature be sovereign, the comparison between its powers and those of any other body becomes impossible since it follows from the premise that what parliament has ordained no other organisation can set aside. Clearly, therefore, to the jurist, the claim of the Presbyterian Church to be a *societas perfecta* was *ab initio* void; for that claim would involve the possession of a sovereignty which theory will admit to none save king in parliament.¹⁰⁵ That was what the lord president meant by his assertion that the church possessed not rights but privileges; for rights it could hold only by virtue of an unique supremacy, whereas privilege emphasized the essential inferiority of its position. The courts, in fact, were denying the doctrine of the two kingdoms. Where the Presbyterian saw two states within society one of which happened to be his church, the lawyer saw no distinction between society and the state and held the church to be but an arm of the latter. By grace of parliament the church might legislate on matters purely ecclesiastical, and a certain comity would give respect to its decisions. But

¹⁰⁴ This is of course the simple doctrine of Parliamentary sovereignty discussed by Professor Dicey in the first chapter of his *Law of the Constitution*. It is very effectively criticised in the last chapter of Professor McIlwain's *High Court of Parliament*.

¹⁰⁵ I have tried to work out the implications of this doctrine in a paper in the *Journal of Philosophy* on the 'Sovereignty of the State' for February, 1916.

the power was of grace, and the respect was merely courtesy; for the definition of ecclesiastical matters in no way lay with the church's jurisdiction.¹⁰⁶ Clearly between such an attitude as this and the theories of Dr. Chalmers there could be no compromise. The premises of the one denied the axioms of the other. The church dare not admit what Lord Fullerton called "the supposed infallibility of the court of session"¹⁰⁷ without destroying its own independence. Nor could there be grounds for such a course. "No Church," the pious Buchanan told the general assembly of 1838,¹⁰⁸ "could ever be justified in obeying another master than Christ." It was useless to contend that if state-endowed the church must be unfree, for it was on the basis of freedom that endowment had been accepted. The demands of the court of session would make the oath of ministerial obedience a mockery.¹⁰⁹ So was the issue joined.

VI

The attitude of the ministry was in an important way different from that of the court of session. It was indeed, very akin to that of the moderate party in the church itself, of which the able Dr. Cook was the leader.¹¹⁰ To him the church was not the creature of the state. It was independent. There were the two provinces, civil and ecclesiastical; but where a difference arose between the powers the ultimate decision must rest with the courts of law. "When any law" he urged in 1838,¹¹¹ "is declared by the competent (civil) authorities to affect civil right the Church cannot set aside such a right . . . so to do would be to declare ourselves superior to the law of the land." To him the claim of the church seemed little less than an attempt at a new popery, and he refused from the outset to identify it

¹⁰⁶ Robertson, II, 37, Per Lord Gillies.

¹⁰⁷ Buchanan, I, 465.

¹⁰⁸ Buchanan, I, 472.

¹⁰⁹ Buchanan, I, 478.

¹¹⁰ The reader of Buchanan's work should be warned that the writer's prejudices lead him consistently to misrepresent Dr. Cook's attitude.

¹¹¹ Buchanan, I, 481, II, 24.

with liberty of conscience.¹¹² The acceptance of an establishment made, in his view, a vital difference. It meant that the church accepted the secular definition of its powers, and that resistance to such definition was tantamount to rebellion.¹¹³ He did not deny the headship of Christ; but he did believe "that there may be ground for diversity of opinion as to what is comprehended under that Headship in all cases," and the decision, in an ambiguous case, where conflict arose between church and state, seemed to him to belong to the state.¹¹⁴ He was impressed, as the court of session was impressed, with the impossibility of arriving at a decision if the coördination of powers be admitted, and it was clearly upon their grounds that he urged the church to give way.

It was this difference between established and voluntary churches which finally weighed with Sir Robert Peel. The right of the Roman Catholics, or the Protestant Dissenters absolutely to control those who chose to submit to their jurisdiction was unquestionable. The state would attempt no interference with it. "But if," he pointed out,¹¹⁵ "a church chooses to have the advantage of an establishment, and to hold those privileges which the law confers—that church, whether it be the Church of Rome, or the Church of England or the Presbyterian Church of Scotland, must conform to the law." To him the position taken up by the church was inadmissible since it involved the rights of determining the limits of its jurisdiction. That could be done only by "the tribunal appointed by parliament, which is the house of lords." Nor did Sir James Graham, upon whom the defence of the government's attitude mainly rested, offer any greater consolation to the church. "They declare," he told the house of commons,¹¹⁶ that any act of Parliament passed without the consent of the church and nation shall be void and of none

¹¹² Buchanan, II, 24.

¹¹³ Buchanan, II, 261.

¹¹⁴ Buchanan, II, 516. Compare with this Manning's view that the right to fix the limits of its own power was essentially the possession of the Church, *Vatican Decrees*, 1875, p. 54.

¹¹⁵ Hansard, 3d Ser., Vol. 67, p. 502.

¹¹⁶ *Ib.*, March 7, 1843, pp. 382 ff.

effect. . . . I think that to such a claim no concession should be made." Since the sphere of jurisdiction between church and state had not been defined, to admit the Presbyterian claim would be to admit "the caprice of a body independent of law," with the result that no dispute would ever admit of settlement. The church was established by the state, and was spiritually bound by the terms of its establishment. If it was not the creature of the state, "still the state employs the church on certain terms as the religious instructor of the people of Scotland," and the employé was virtually demanding the right to lay down the conditions of its employment. That demand could not be admitted; for those conditions were embodied in statutes of which the interpretation must rest with the supreme civil tribunal. The church was definitely inferior, as a source of jurisdiction, to the house of lords. "These pretensions," he said,¹¹⁷ "of the Church of Scotland, as they now stand, to coördinate jurisdiction, and the demand that the government should by law recognise the right of the church to determine in doubtful cases what is spiritual and what is civil, and thereby to adjudicate on matters involving rights of property, appears to me to rest on expectations and views so unjust and unreasonable, that the sooner they are extinguished the better."

Some points of importance deserve to be noted in this connection. The church, certainly, did not claim the right to decide the nature of its jurisdiction.¹¹⁸ What it in fact claimed was the essentially historic grant of a right to control its own affairs. To itself, that right, admitted in 1690, and doubly confirmed in 1705, was wantonly violated in 1712; and the church was compelled to regard that act as a nullification of the fundamental law made but seven years previously. The real head and centre of the whole problem was thus the theory of parliamentary sovereignty. The church could not conceive an inherent right in parliament to disregard an obligation assumed with such solemnity. Nor, equally, was it within the competence of the courts to disregard an act which the church, from its stand-

¹¹⁷ Hansard. March 7, 1843, pp. 382 ff.

¹¹⁸ See above, the references to notes 60 and 61.

point rightly, condemned. For the courts there could not be such a thing as a fundamental law. They could not, with the act of 1712 before them, announce that lay patronage was an ecclesiastical question, and therefore within the competence of the general assembly, for so to do would be not only to question the sovereignty of parliament, but also, implicitly, to admit that the general assembly was a coördinate legislature with parliament. A new theory of the state was required before they would admit so startling a proposition.

A second point is of interest. In the judgment of Lord Medwyn there is a theory of church and state which, impliedly at least, was also the theory of Sir Robert Peel.¹¹⁹ A voluntary church possesses the authority and rights claimed by the Church of Scotland; but when the alliance with the state was made the rights must be considered as surrendered. All that the church could do is to break the agreement should it feel dissatisfied with the results of the alliance. But, as a fact, it was not law in 1838, and it is not now law, that a voluntary association is independent of the state in the degree claimed by the Scottish church. If our antagonism to such societies has not found such open expression as in France,¹²⁰—if, in brief we have no *loi le Chapelier*,¹²¹—that is rather because by implication the power of control is already at hand. For, in the view of the state, immediately a church receives property upon condition of a trust, the state is the interpreter of that trust, and will interfere even with an unestablished church to secure its enforcement.¹²² Lord Medwyn and Sir Robert Peel were claiming for the state a sovereignty far less than that of legal doctrine.¹²³ For if the church once take any step which involves property relations, it brings itself

¹¹⁹ Cf. Innes, p. 74 and the interesting note on that page.

¹²⁰ Cf. Combes: *Une Campagne Laïque*, p. 20—, the citation from the Duc de Broglie.

¹²¹ And Article 29 of the Code Penale forbids associations of more than twenty persons even for social purposes. Seilhac: *Syndicats Ouvriers*, p. 64.

¹²² See my paper on "The strict interpretation of Ecclesiastical trusts" in the *Canadian Law Times* for March, 1916.

¹²³ Sir F. Pollock has protested (10 L. Q. R. 99) that English lawyers do not now accept this view; it is certainly that of the courts.

within the scope of the civil law; and its own inherent rights cannot be a ground of contest against the supremacy of parliament.¹²⁴ Allegiance to the law is absolute, since the law does not admit of degrees of acceptance. What Lord-Justice Clerk Hope said as to the effect of statute remains as true in relation to a voluntary body as in relation to the established church of which he spoke. "Their refusal to perform the ecclesiastical duty is a violation of a statute, therefore a civil wrong to the party injured, therefore cognisable by courts of law, therefore a wrong for which the ecclesiastical persons are amenable to law, because there is no exemption for them from the ordinary tribunals of this country if they do not obey the duties laid upon them by statute."¹²⁵ Clearly from this *impasse* disruption was the one outlet.

VII.

One last judicial theory deserves some consideration. In his brilliant dissenting judgment, Lord Jeffrey took a ground very different from that of his brethren.¹²⁶ His whole conception of the problem was based on his belief that once Lord Kinnoull had presented Mr. Young to the living of Auchterarder, the proceedings became ecclesiastical in nature; and for the court of session to force Mr. Young upon the presbytery was to "intrude in the most flagrant manner almost that can be imagined, on their sacred and peculiar province. It would be but a little greater profanation if we were asked to order a church court to admit a party to the communion table,¹²⁷ whom they had repelled from it on religious grounds, because he had satisfied us that he was prejudiced in his exercise of his civil rights by the exclusion."¹²⁸ Lord Jeffrey, in fact, argues that there is a method of discovering the right province of any action of which the exact

¹²⁴ Robertson, II, 121.

¹²⁵ Kinnoull v. Ferguson (1843), 5, D. 1010, Innes, p. 52.

¹²⁶ Robertson, II, 380 ff.

¹²⁷ But this has now been done in the Church of England. See Bannister v. Thompson (1908), p. 362, and on the rule for prohibition R. v. Dibdin (1912), A. C. 533.

¹²⁸ Robertson, II, 372.

nature is uncertain. The result of the action ought to be considered, and if that result is fundamentally ecclesiastical rather than civil, the courts ought to treat the case as the concern of an independent and coördinate jurisdiction—the church court. He pointed out that practically every action has in some sort a civil result. “When the general assembly,” he said,¹²⁹ “deposes a clergyman for heresy or gross immorality, his civil interests and those of his family suffer to a pitiable extent. But is the act of deposition the less an ecclesiastical proceeding on that account?” He adopts, it is clear, a pragmatic test of the ownership of debatable ground. The limits of jurisdiction are not, as in Chalmers’s view, so clearly defined at the outset as to make collision impossible. Rather is its possibility admitted and frankly faced. What Jeffrey then suggested as the true course was to balance the amount of civil loss Lord Kinnoull would suffer against the ecclesiastical loss of the church; if that were done, he urged that the church would be seen to have suffered more, and he therefore gave his decision in its favour. The argument is a valuable contribution to that pragmatic theory of law of which Professor Pound has emphasized the desirability.¹³⁰

VIII

It was a dictum of Lord Acton that from the study of political theory above all things we derive a conviction of the essential continuity of history. Assuredly he who sets out to narrate the comparative history of the ideas which pervade the Disruption of 1843 would find himself studying the political controversies of half a thousand years. For it is difficult to find more fundamental problems than the questions the Disruption raised; nor has there been novelty in the replies that then were made. The theory of those who opposed the Free Church has its roots far back in the Reformation. It can be paralleled from Luther and Whitgift, just as the theory of Chalmers and his adherents is historically connected with the principles with which Barclay confronted

¹²⁹ Robertson, II, 362.

¹³⁰ 27 Harv. L. Rev., 735.

Ultramontaniam, and the Jesuits a civil power that aimed at supremacy.¹³¹

The Presbyterians of 1843 were fighting the notion of a unitary state. To them it seemed obvious that the society to which they belonged was no mere cog-wheel in the machinery of the state, destined only to work in harmony with its motions. They felt the strength of a personality which, as they urged, was complete and self-sufficient, just as the medieval state asserted its right to independence when it was strong enough not merely to resent, but even to repudiate, the tutelage of the ecclesiastical power. They were fighting a state which had taken over bodily the principles and ideals of the medieval theocracy. They urged the essential federalism of society, the impossibility of confiding sovereignty to any one of its constituent parts, just as Bellarmine had done in the seventeenth century, and Tarquini in later days.¹³² If there seems something of irony in such a union, the Miltonic identification of priest and presbyter may well stand voucher for it.¹³³ The problem which Presbyterian and Jesuit confronted was, after all, at bottom fundamentally identical. We must not then marvel at the similarity of the response each made.

Nor was the attitude of the court of session less deeply rooted in the past. Historically it goes back to that passionate Erastianism of Luther which was the only answer he could make to the unswerving Austinianism of Rome.¹³⁴ If, in the nineteenth century, the divinity he claimed for civil society has disappeared, the worship of a supposed logical necessity in unified governance—itsself a medieval thing¹³⁵—has more than taken its place. Lord President Hope seems to have been as horrified at the implicit

¹³¹ Cf. Figgis: *From Gerson to Grotius*, p. 63.

¹³² Figgis, op. cit., p. 184. See Tarquini: *Institutiones*, *passim*.

¹³³ It is a matter of great interest that the Presbyterians, like the Jesuits, should have had two quite distinct theories of the State, according to their political circumstances. One has to distinguish sharply in the seventeenth century between men like Cartwright with a definite theory of the two kingdoms, and that of the Presbyterians in the Parliaments of Charles I. The latter was definitely Erastian and it was against that theory that Milton intelligibly inveighed. Cf. generally, Figgis: *Divine Right of Kings*, Chapter IX.

¹³⁴ Works (Jena Ed.), II., 339.

¹³⁵ Cf. Maitland: *Gierke*, p. 162.

federalism of the Free Church as was good Archbishop Whitgift at the federalism of Cartwright.¹³⁶ He does not understand the notion of the two kingdoms, and so falls back on the stern logic of parliamentary sovereignty. The state, so it is conceived, cannot admit limitations to its power; for from such limitation anarchy is eventually the product. Therefore the societies within the state can exist only on sufferance; and if the England of 1843 did not set an example to the France of sixty years later, it was not from want of theorising about the rights of congregations.¹³⁷ It is one of the curiosities of political thought that just as in the medieval church insistence on the unity of allegiance should ultimately have led to the reformation, yet its consequence should have been the creation of an organisation demanding no smaller rights than its predecessor. The state, like the church of past time, is set over against the individual, and stout denial is given to the reality of other human fellowship.

Between two such antithetic ideals compromise was impossible. The assertion of the one involved the rejection of the other. If the state, theoretically, was in the event victorious, practically it suffered a moral defeat. And it may be suggested that its virtual admission in 1874 that the church was right is sufficient evidence that the earlier resistance of the court of session to her claims was mistaken.¹³⁸ If it was mistaken, the source of error is obvious. A state that demands the admission that its conscience is supreme goes beyond the limits of righteous claim. It will attain a theoretic unity only by the expulsion of those who have the spirit to doubt its rectitude. It seems hardly worth while to discuss so inadequate an outlook. The division of power may connote a pluralistic world. It may throw to the winds that omniscient state for which Hegel in Germany and Austin in England have long and firmly stood the sponsors. Yet insofar as that destruction is achieved it will the more firmly unite itself to reality.

¹³⁶ Strype: *Life of Whitgift*, II, 22 ff.

¹³⁷ Mr. Figgis, both in his *From Gerson to Grotius* and his *Churches in the Modern State*, attacks very bitterly the Austinianism of M. Combes in his *Une Campagne Laïque*; but I do not feel that he understands either the provocation to which the republic was subjected, or the trespasses of French Ultramontanism.

¹³⁸ Innes, p. 113.

ORIGIN OF THE FRIAR LANDS QUESTION IN THE PHILIPPINES

CHARLES H. CUNNINGHAM

When the American government found itself in possession of the newly acquired portions of Spain's colonial empire, and particularly of the Philippines, it was forced to deal with many new and hitherto unfamiliar problems. Social, political and ecclesiastical characteristics were encountered there which were entirely foreign to American governmental traditions, but which were interwoven in the fabric of Philippine institutions and society by three centuries of Spanish rule. Among these was the universally recognized strength and importance of the ecclesiastical power, which in Spanish days had been fostered and protected by the state. Under the new conditions the ecclesiastical organization had to stand by itself, without governmental support.

Probably the most difficult problem which had to be solved was the celebrated friar land question. Thousands of hectares of the best land in the archipelago were owned or held by the religious orders. The friars had held these lands for centuries. The economic effect of these holdings was detrimental on account of the prohibitive rents which were demanded for them. The religious orders would not sell these lands of their own accord, and thus the Filipino agriculturists who desired to utilize them were prevented either from buying or renting. The government was also at a loss, since no taxes were paid on the lands of the church. This state of affairs was held by the American authorities to be inconsistent with the best interests of the Filipino people, and with the ideals of a free government. Mr. Taft made arrangements with the Holy See for the purchase of these lands, and thus the American government, by forcing the friars to sell, put an end to a problem which had been a cause of con-

tention, not only under the new sovereignty, but through two centuries of Spanish rule.

Not only was the struggle over friar lands interesting and important as a series of events which actually occurred in the Philippines, New Spain and the viceroyalties of South America, and therefore characteristic of the entire Spanish colonial empire, but it involved certain principles which lay at the foundations of the relations between church and state there. The early attempts of the government to exercise jurisdiction over the friars in the matter of the inspection of their titles to lands, and the urgent pretensions of the orders to exemption on the grounds of ecclesiastical immunity, like the struggle over episcopal visitation, were only a recurrence in the Philippines of a conflict which has arisen in every country where church and state have been united and where the influence of the former has been predominant in political affairs.

At various times during the history of the islands the attention of the home authorities in Madrid had been called to the abuses of the religious orders in their tenure of lands. The general complaint was that the friars had laid claims to lands without title, and that through the seizure both of the lands of the natives and of royal domains, in addition to properties granted them by the crown, they had become extensive landlords. It was said that they had imposed heavy rentals on the natives who occupied these estates and that they had frequently dispossessed persons whose titles and right of occupation had been unquestioned before that time. They were accused of the alienation of the lands which the king had permitted them to occupy, and this proceeding was contrary to the conditions under which they were permitted to hold the royal estates. These abuses had become so flagrant that during the latter part of the seventeenth century the government at Madrid determined that something must be done to remedy this state of affairs, and it was decided that all occupants of royal lands, and all persons claiming lands on their own account should be called upon to prove their right of tenure. In accordance with this resolution

a *cédula* was promulgated on June 7, 1687, directing the Philippine audiencia to make an investigation of the friar lands of the islands, and to report to the council of the Indies on the amount, value and rental of all properties held by the religious orders.¹ Furthermore, the king asked for an estimate of the amount of land actually required by the orders for their support. The audiencia was governing temporarily when this order was received, and in compliance therewith it commanded that each *alcalde mayor* should investigate the friar lands in his district. This was accordingly done and the audiencia reported in due time to the council of the Indies.

It must not be imagined that this situation was confined alone to the Philippines. The above investigation, which was conducted by the Philippine audiencia, may be considered as a part of a general enquiry into the validity of land titles in all of the colonies of Spain. Don Bernardino Valdés, of the council of the Indies, was given supervision over this matter in his commission as "*juez particular y privativo* for the collection of all sums due to the *real hacienda* in the viceroyalties of Peru and New Spain, through the purchase, sale and adjustment (survey) of lands, towns, villages and jurisdictions."² He was also given authority in the collection of "all fines and condemnations imposed by the Council and Cámara of the Indies and belonging to the royal exchequer, with the power of proceeding against all persons in these realms as well as in the Indies who are indebted to the king." He was empowered to subdelegate his authority to

¹ *Cédula* of June 7, 1687, with corresponding *testimonios*; A. I., 68-4-12.

² *Cédula* of October 30, 1692, King to Valdés; A. I., 68-4-12. In the words of the commission itself, Valdés was named "para poner cobro en los delitos que en el Peru y Nueva España resultaren en favor de la real hacienda por compras de villas, jurisdicciones ó qualquier bienes raices, ó cosa que se huviese, por venta enagenado de la Corona, concediendole facultad de subdelegar estas comisiones en ministros de las audiencias de Indias y otras qualesquier personas de su satisfacción para recaudar los caudales que procediesen de estos efectos, y que se remitiesen por cuenta separada al mismo ministro, ó á el que le subcediese en la comisión que otorgase á las partes las apelaciones de sus sentencias á el Consejo de Indias, y que este sugeto la sirve assi y igualmente."

judges in the colonies. Appeals from them were to be heard in the council of the Indies.³

In the above *cédula* no mention was made of the church. There exists nothing in the wording or contents of this order to indicate that the church or friars were or had been offenders. Valdés was charged with the investigation of the titles to all lands, forests and estates, held by any person or corporation. If, within six months after the publication of the summons the possessors had not shown the legality of their occupancy, the estates were to become a part of the royal patrimony. The king gave expression in this *cédula* to the belief that in the Indies there was much land belonging to the crown which was occupied without title or justification, a condition contrary to the royal intentions, and in actual defiance of the laws of the Indies.⁴ The abuse was increasing, the *cédula* alleged, and called for amelioration.

Don Juan de Sierra Osorio, *oidor* of the audiencia of Mexico, was commissioned by Valdés to investigate and verify the status of lands, royal, private, assigned and unassigned, which were held by different individuals and corporations in the Philippines.⁵ He arrived and began his work at Manila in 1695.⁶ According

³ There was some doubt in the minds of the councillors regarding the question of whether appeals should be entertained by the *juez privativo* or by the Council itself, and whether said *juez* should render account for money collected from fines directly to the Council or to the *Real Contaduría*. The *cédula* of 1692, referred to above, established the authority of the Council, but the subsequent resolution of November 13, 1717, declared that everything pertaining to *real hacienda* should be remitted *via reservada*, without the intervention of the Council of the Indies. Two *consultas* were sent by the Council to the King on September 28, 1735, and October 30, 1736, respectively, asking for a royal resolution on the subject, and presenting arguments on both sides of the question. The matter was settled by the royal decree of November 16, 1737, which declared that thereafter the *juez de composiciones* should render account directly to the King, *via reservada*, but that appeals in these cases should be entertained by the Council of the Indies. A. I., 141-4-5.

⁴ *Recopilación de Leyes de Indias*, Lib. 4, tit. 12.

⁵ Camacho Controversy, in Blair and Robertson, *Philippine Islands*, XLII, 26.

⁶ Concepción, *Historia General de Philipinas*, VIII, 192. Concepción gives this date as 1675, but he contradicts himself by a subsequent discussion of

to his commission he was subdelegated "the cognizance and settlement of (questions relating to) the lands and possessions, which, by sale or gift, have been alienated from the royal patrimony and dominion of (the) king."⁷

The lands of the church were not specifically mentioned in the commission of Valdés, neither were they referred to in that of his subdelegate, Sierra. However, there can be no question but that the conditions of land-holding by the friars constituted a grave problem in the Philippines, and that it was the royal will that the abuses of the religious should be remedied. This is evidenced by the fact that the issuance of Sierra's commission immediately followed the receipt at Madrid of the report of the *audiencia*, and that while in the Philippines Sierra directed the greater part of his attention to correcting the evils in the tenure of lands by the friars.

Father Concepción, however, states the object of Sierra's mission in terms more favorable to the churchmen, and in complete accordance with the commission of Valdés. According to the Augustinian historian, Sierra "was commissioned to collect certain debts due to the king, which had resulted from the sale of crown lands; (to ascertain) whether they (the friars) had alienated them, giving them away as gifts, and to see if any person or community possessed any royal lands without title, or if there had been usurpation; . . . he (Sierra), in the name of His Majesty, gave them a year in which to remedy the matter, and to prove their claims."⁸ Even here, however, we note an

Sierra's relations with Archbishop Camacho in 1698. Sierra could not have been sent to the Islands by Valdés in 1675, because the latter was not commissioned until 1692.

⁷ Papal Delegate to King, June 2, 1698; Blair and Robertson, *Philippine Islands*, LX, 33.

⁸ Concepción, VIII, 192-206. This question gave rise to a bitter controversy in 1906, between the modern Filipino writer, Dr. T. H. Pardo de Tavera, and the Dominicans of the University of Santo Tomás of Manila. Dr. Pardo de Tavera, in his article in the *Philippine Census* (I, 340-346), on religious conditions in the Philippines prior to the American occupation, painted a very dark picture of the work and general influence of the friars in the history of the Islands. In answer, the Dominicans cited the above quotation from the work of Concepción, to prove that Sierra was not sent for the express purpose, as

admission on the part of the best ecclesiastical authority of the Philippines, always the champion of the church, that the object of the government was to correct abuses which had arisen in the land tenure of the friars. Whatever instructions Sierra may have had, he at once summoned the regulars to appear before him, and gave them a year in which to prove their right to the land occupied by them.⁹ The friars, fortifying themselves with the Bull, *De la Cena*,¹⁰ contended that Sierra had no authority over them by virtue of the ecclesiastical immunity afforded to them by the above papal decree.

The ecclesiastical standpoint in this matter is well expressed by the modern Dominicans of the Philippine Islands in the controversial article already referred to.¹¹ They agree substantially

Pardo de Tavera had alleged, of inspecting and verifying the friars' titles to lands. The statement to which the Dominicans took exception was as follows: "the King commissioned Auditor Sierra to compile data and send him a report as to the kinds of titles and descriptions of the valuable lands held by the friars, but the friars refused to furnish any information to the auditor, stating that they were exempt from any such formalities, and as . . . they were unable to prove the legality of their titles they were declared to be "occupants in bad faith." It has been noted above that neither Sierra nor Valdés were especially commissioned to investigate the titles to the friars' lands. See *Reseña histórica de Filipinas desde su descubrimiento hasta 1903*, by Dr. T. H. Pardo de Tavera (it being the original Spanish edition of the article in the Philippine Census), p. 37. See also the Dominican reply to the above: *Sobre una reseña histórica de Filipinas*, pp. 68-89.

⁹ The modern historian of the Philippines, José Montero y Vidal, relates the object of Sierra's mission in terms still more unfavorable to the friars. He states that the lands referred to were the unassigned villages or lands belonging to the government, lands which had been usurped by the religious orders through the action of certain of their missionaries who had first evangelized among the Indians. Later, he says, the orders established themselves without troubling themselves as to titles.—Montero y Vidal, *Historia General de Filipinas*, I, 385.

¹⁰ The Bull, *De la Cena* was issued by Pope Urban VIII in 1627. It censured those temporal authorities who usurped the ecclesiastical jurisdiction, revenues, incomes and properties.—Footnote by Middleton in Blair and Robertson, *Philippine Islands*, XLII, 26.

¹¹ *Sobre una reseña histórica*, 65-66. This work states that Sierra later declared them to be holders in bad faith, and that, to enlist support for this denunciation, he went out among the Indians, stirred up strife among them, obtained testimony against the friars by dint of blows, beatings and unheard of cruelties, and thus proved them to be usurpers.

with Concepción, upon whose history they base their contentions. They allege that it was never the purpose of the regulars to deny the right of the king, that the friars did not at any time oppose the royal jurisdiction, but that they always abided by the laws and complied with the requirement that they should submit their titles for confirmation. However, they assert that the regulars did object to appearing before Sierra, "like criminal defendants, in spite of the *fuero* of exemption; they demurred on the grounds that they and all their possessions were exempt from his interference, that they were not obliged to appear before any court and answer judicially; that this procedure was in violation of the ecclesiastical immunity which all their estates and possessions enjoyed."¹²

The friars appealed to the audiencia against the dictum of Sierra, on the complaint that he was exceeding the powers conferred upon him by his commission, and was consequently guilty of *fuerza*,¹³ but the tribunal rejected the appeal and supported the *visitador* in his struggle against the friars. Sierra, at least for a time, had the sanction of Archbishop Camacho, who had arrived in 1697.¹⁴ The regulars turned to this prelate for support, but at this particular time Camacho was not inclined to favor them, owing to their resistance of his efforts to enforce episcopal visitation. They then appealed to Bishop Gonzales, of Nueva Cáceres, the papal delegate. The latter entertained the appeal. He went to Manila in the interests of the friars, and immediately became involved in a struggle with the arch-

¹² Concepción, *Historia General de Philipinas*, VIII, 193, *et seq.*

¹³ *Fuerza (recurso de)* "Apelación para ante el juez secular contra el abuso ó violencia que consta un juez eclesiástico."—Alcubilla, *Diccionario de Administración*, V, 807. A more simple definition is that furnished by A. P. Cushing, in Blair and Robertson, *Philippine Islands*, V, 292: "*Fuerza* is injury committed by an ecclesiastical judge, (1) in hearing a case which does not come within his jurisdiction, (2) non-observance of rules of procedure, (3) unjust refusal to allow an appeal. In such cases the aid of the secular courts may be invoked by the *recurso de fuerza*, and thus cases were brought before the Audiencia." It came about that, through association, the encroachment of the civil authority upon the ecclesiastical jurisdiction was also termed *fuerza*. It was so designated in this case.

¹⁴ Montero y Vidal, *Historia General de Filipinas*, I, 385.

bishop, in the course of which the two prelates mutually excommunicated each other.¹⁵ The delegate was finally overcome, however, because the audiencia supported the archbishop. Through the good offices of the governor and audiencia the prelates were respectively persuaded to cancel their censures, and Gonzales departed to his province, with his jurisdiction as papal delegate sadly impaired by the successful defiance of the archbishop, while the friars were none the better for his efforts.¹⁶

On May 16, 1697, the provincials of the five leading orders which had been most prominent in resisting the claims of the civil government, were summoned before the audiencia, and there the presiding judge administered to them a severe reprimand for their defiance of the royal commands. They were charged with responsibility for the disturbances which had just been quieted, and were pronounced insubordinate for refusing to recognize the royal right of intervention in the matter of the land titles, and in resisting episcopal visitation. An interested Jesuit, who wrote at that time to a friend in Spain, described the treatment accorded to the provincials by the audiencia as "without the courteous treatment and respectful address which his Majesty himself observes" in dealing with the churchmen.¹⁷ The audiencia, further, in three successive edicts, threatened the provincials with banishment and deprivation of their regular incomes.

In the early part of the year 1698, Sierra, whose work had extended through a period of three years and whose efforts to make the friars submit their titles to the government for inspection had been fruitless, was succeeded by another *visitador*, Don

¹⁵ It is said that on this occasion Archbishop Camacho tried to make a bargain with the regulars. In exchange for the right of visiting them, he offered to support their pretensions to exemption from governmental interference in the land controversy. Camacho, according to the Dominicans of the University of Santo Tomás, first resisted Sierra, but when the friars would not submit to visitation he changed his attitude and sided with the *visitador* against the regulars. *Sobre una reseña histórica*, 74-77.

¹⁶ Papal Delegate to the Pope, June 2, 1698; Blair and Robertson, *Philippine Islands*, XLII, 33-42.

¹⁷ Blair and Robertson, *Philippine Islands*, XLII, 31.

Juan Ozaeta y Oro, also from Mexico. The latter had instructions to modify the stringent demands of Sierra. One authority states that pressure was exerted by Governor Fausto Cruzat y Góngora, whose *residencia* was approaching.¹⁸ At any event, according to the Dominicans referred to above, Ozaeta disapproved of all that Sierra had done with regard to the titles of the friars' lands, and requested, by *ruego y encargo*, that the friars, as a favor, and not in response to imperative summons, should present their titles extra-judicially before the secular court.¹⁹ The regulars complied with this request without offering any objections. The *oidor* found the titles to be in proper legal form, and accepted them, thus substantiating the claims of the religious orders.²⁰

The official letters of Ozaeta himself, dated September 16, 1698, which are sources of a non-ecclesiastical character, give conclusive evidence on the question of why he repudiated Sierra's acts and made peace with the friars.²¹ He stated that a royal *cédula* of 1698 (no definite date, but probably his commission), forbade him, as an ordinary magistrate, to summon the friars before him,

¹⁸ Montero y Vidal, *Historia General*, I, 388. Pardo de Tavera, *Philippine Census*, I, 342. Sierra was unquestionably superseded because his mission had failed to accomplish anything but discord. The government was obliged to accede to the friars in this controversy, as it was compelled to do in the struggle over ecclesiastical visitation. Ozaeta's work shows a change of policy similar to that revealed by the recall of Archbishop Pardo from exile by Governor Curuzaelegui. (Blair and Robertson, *Philippine Islands*, XLII, 28; L, 155, note).

¹⁹ The Dominicans, often cited in this paper, make the point that it was not within the province of the *visitador* to declare that the lands were not held in good faith. He was only empowered to decide whether the papers were executed legally and in good form. They point out that the titles have held good all these years; that the critical American government has examined and found them good (though it forced the sale of the lands on the grounds that the church should not continue to hold them), and they further quote Mr. Taft as having said that if the friar lands were not held in good title, there were no lands in the Philippines that were so held.

²⁰ The Dominican authors of the book quoted above allege that in making this statement they are in substantial agreement with all of the celebrated historians of the Philippines, including Concepción, Fonseca, Salazar, Zúñiga, Montero y Vidál, and, in fact, all except Dr. Pardo Tavera.

²¹ Ozaeta to the Jesuit Provincial, September 16, 1698: A. I., 68-6-26.

and to examine them as criminals, as had been done formerly by Sierra. He was not to examine all their holdings, but only to direct his attention to excesses which had arisen, and to well-defined complaints which clearly alleged usurpation.²²

In Ozaeta's settlement of the question the government was temporarily vanquished. For ten years no further attempt was made by the civil authorities to cause the friars to conform to the government's earlier pretensions. The continued hostility of the friars, and their unwillingness to submit their titles to inspection moved the king, in the *cédulas* of September 10, 1709, and November 20, 1714, respectively, to give a ten years' dispensation to the orders, excusing them during that period from further interference. Notwithstanding this, the government continued to appoint magistrates for the inspection of land titles. On June 12, 1723, Don Julian Velasco, *oidor* of the audiencia of Manila, and subdelegate judge for the inspection of land titles, made a report which summarized twelve years of unsuccessful effort to exercise jurisdiction over the holdings of the friars.²³ The report of Velasco testified that only the Augustinians, the Recollects, and the Order of St. John of God had submitted to Ozaeta in 1698, but that the latter had confirmed the titles of all the orders, whether they had acknowledged his jurisdiction or not.

²² Dr. Pardo de Tavera says that Ozaeta pigeon-holed the matter, but the whole question was settled as shown above. The government merely moderated its claims, but it did not entirely desist from them at this time. See *Philippine Census* I, 342.

²³ Velasco to Audiencia, June 17, 1723; A. I., 68-6-26. This, and the documents relative to the commission of Ozaeta, described above, are to be found as *testimonios* bearing on a subsequent commission which was given to *Oidor* Calderón, presently to be referred to.

The fact that the inspection of the titles to friar lands was only a part of the work of the *juez de composiciones* has already been stated. It may be noted again in the appointment of Velasco at a time when the friars had been exempted. This was also true in other parts of Spain's dominions. On September 27, 1697, Licentiate Don Juan Feixoo Centellas, *oidor* of the Audiencia of Guadalajara and *juez de composiciones de tierras* for Nueva Galicia and Nueva Vizcaya, made a report showing that he had passed upon the titles of twenty-three estates since he had been in office, none of which were ecclesiastical. (Feixoo to Valdés, September 27, 1697, A. I., 67-1-7.) The *juez de composiciones de tierras* has a counterpart today in the Philippines and in the United States in the court of claims.

Because of this the audiencia decided on August 7, 1720, that those who had not submitted in 1698 should not be held as possessors in bad faith. The government showed the same disposition on this occasion as in 1698 to waive its former claims and to adopt a policy of conciliation. There can be no question but that the fear that the friars would leave the Islands if they were not permitted to enjoy complete and undisturbed possession of their estates did much to influence the government to modify its attitude in the matter of the friar lands, as well as in that of ecclesiastical visitation.²⁴ In his report of June 12, 1723, already referred to, Velasco recommended that further remissions be made, and that the claims of the government should be dispensed with for all time. He characterized the work of his predecessors as ineffectual, and asserted that a continuation of the effort by the government to interfere with the friar lands would continue to cause friction and ill feeling between the orders and the civil government. Velasco's recommendations were made to the king through the *real acuerdo*, which meant that they had the support of the royal audiencia.²⁵

The controversy was re-opened in 1736, when the government made another attempt to cause the friars to prove title. Don Antonio de Pineda, a minister of the council of the Indies, was

²⁴ It must be remembered that while the government and the friars were having these differences, a much more transcendental struggle was in progress between church and state throughout the entire Spanish Empire over the question of ecclesiastical visitation. The two controversies must be considered in their inter-relation for a complete understanding of either. In the Philippines the conflict was as bitter as in any other part of the Empire, and the government had first supported the archbishop in the claims of the latter to the exercise of the prerogative of visitation. The orders would not recede from their position, however, and they threatened to leave the Islands if the prelate insisted. A great many did actually desert their parishes and come to Manila for the alleged purpose of debarkation for Spain. This alarmed the civil authorities, for, without the friars, the greater number of the parishes in the Philippines would have been without ecclesiastical occupants, on account of the paucity of secular priests. The government, therefore, receded from its position, and the friars emerged victorious in the struggle. (See my article on *The Question of Ecclesiastical Visitation in the Philippines*, in *The Pacific Ocean in History*. This paper was read at the session of the Panama-Pacific Historical Congress in July, 1915.)

²⁵ Velasco and Real Acuerdo to the King, June 12, 1723; A. I., 68-6-26.

entrusted with a commission of the same character as that which had formerly been given to Valdés.²⁶ Pineda named Licentiate Pedro Calderón Enriquez, *oidor* of the audiencia of Manila as his representative in the Philippines. The commission of Calderón was literally a transfer to the latter of Pineda's jurisdiction in Manila, "over all suits and questions which arise pertaining to the adjustment of lands, with appeal to the superintendent, and the collection of all dues for the lands belonging to his majesty, which have not been alienated with just title."²⁷ Calderón was instructed to send an itemized account of all funds collected to the royal *contaduría* at Madrid, *via reservada*.

In compliance with these instructions Calderón sent an official notice of his appointment to the provincials of the orders and societies on March 6, 1739, requesting that they place before him records and titles of all lands in their possession. This summons was variously received by the different orders. The Nuns of St. Isabel, the Recollects, Dominicans and Augustinians complied with the demands of the government during the course of the year, with the understanding that the question involved the regularity of their papers, and not the legality of their holdings. The Hospital of St. John of God, the Franciscan Order and the Society of Jesus held out, claiming ecclesiastical immunity, and citing the precedent which the government had followed since 1698. These recalcitrant orders charged Calderón with individual responsibility for this renewal of the governmental claim of the right to inspect the titles to their lands. They were confident that the king was still favorable to them, and that the action of the *visitador* would be disapproved by the sovereign. While the Franciscans refused to submit to the *oidor*, they complied to the extent of forwarding evidence of their titles directly to the council of the Indies, thus ignoring the *visitador*. The Jesuits, also, contended that the colleges should be exempted from the interference of the *oidor*.

Calderón, after a season of struggle with the orders, in which the above results were accomplished, made recommendations

²⁶ *Cédula* of September 27, 1736, the King to Pineda; A. I., 68-6-26.

²⁷ Pineda to Calderón, October 19, 1737; A. I., 68-6-26.

which were similar in many respects to those which Valasco had made in 1723.²⁸ He stated that the periodical attempt of the civil government to inspect the friars' titles had caused such universal hostility and ill feeling that it was advisable to discontinue the royal claims. The government's pretensions in this matter, as in its efforts to support the archbishop in the enforcement of the principle of ecclesiastical visitation, had always met with the most determined resistance, and had generally been defeated. This, he alleged, was due to the fact that the orders were firmly entrenched, and that the government had always been forced to make concessions to them in order to secure a continuance of their religious, social and educational labors. This was especially true, he stated, because the number of secular priests available to do this work was wholly insufficient. He commented on the low educational and moral standard of the Spanish and Filipino secular clergy, expressing the opinion that they should not be trusted to teach the natives either religion or morality. He recommended, therefore, that the friars should be left in possession of such estates as they had at that time, without the interference of the government except in cases of notorious injustice, which should be called to the attention of the authorities by judicial process. He was unwilling, however, to tolerate further encroachments, or the wholesale usurpation of the lands of the natives on the part of the friars. He claimed that it was his duty and right to intervene for the protection of the property of the natives, and for the correction of such abuses as might arise in the future. Suits of this nature should be tried in the *audiencia*.

Calderón continued to hold the commission for the inspection and supervision of lands for fifteen years, during which time he brought the friars to account on repeated occasions. The excesses of the Dominicans, Jesuits and Augustinians on the island of Luzon from 1740 to 1750 caused several native revolts which had to be put down by armed force. The abuses of the orders, thus revealed, led to various judicial investigations, their usurpa-

²⁸ Calderón to Pineda, May 29, 1739; A. I., 68-6-26.

tions were exposed and remedied, but no punishment seems to have been inflicted. The orders were deprived of the lands which they had seized, part of which were restored to the natives who had originally owned them, and part was declared to be the property of the crown. The Dominicans were also deprived of lands which they had usurped for the support of the University of Santo Tomás. Frauds were also exposed in the surveys of the lands of the Augustinians, by means of which this order was shown to have acted in collusion with certain civil officials, defrauding the government out of thousands of hectares of land.²⁹

In a royal *cédula*, dated November 7, 1751, the king and council of the Indies formally approved of all that Calderón and the Manila audiencia had done in the above matters of the pacification of the Indian villages and the restoration of the lands to the rightful owners. In this *cédula* the Philippine authorities were commanded "to exercise hereafter the utmost vigilance in order that the Indians of the said villages may not be molested by the religious, and that the latter shall be kept in check in the unjust acts which they may in future attempt against not only those Indians but other natives of those islands."³⁰

The audiencia of Manila, on receipt of this royal enactment, passed a resolution in September, 1753, communicating the contents of the *cédula* to the provincials of the orders of St. Dominic, St. Augustine, the Recollects, the Society of Jesus and to the prior of the convent of St. John of God. It also ordered that attested copies should be made and sent to the *alcaldes mayores* of the provinces, so that the decree might be translated into the language of the country and the natives informed of their status and of the wish of the king that they should not be molested further in the tenure of their lands.

From a legal point of view these latter activities of Calderón differed from those of the earlier years of his incumbency as *juez subdelegado de composiciones de tierras* and from those of

²⁹ Blair and Robertson, *The Philippine Islands*, XLVIII, 27-35; 141-145 (note).

³⁰ *Cédula* of November 7, 1751, Blair and Robertson, *The Philippine Islands*, XLVIII, 33.

his predecessors. His recommendations of May 29, 1739, were adopted by the government and no further attempt was made to cause the friars to conform to its earlier demands that all titles of lands held by the friars should be submitted periodically for confirmation. As has been pointed out already, the government was forced to modify its attitude because of the fear that the friars would cease their missionary and parochial labors. The government, it may be said, failed in its efforts to maintain as a principle the right to inspect periodically the land titles of the friars, though it successfully upheld the right to correct such abuses as were called to its attention through legal means. The orders were compelled to accede to the right of the civil government to intervene for the protection of the natives' lands in the latter case, and the jurisdiction of the *juez subdelegado* and of the *audiencia* was admitted on several occasions. The friars were unable to plead ecclesiastical immunity when brought before the civil tribunals to answer charges of fraud or unjust deprivation.

The right of the religious orders to the occupancy of their lands in the Philippines seems clearly established. The various conflicts between them and the civil government served to strengthen their claims, and they were finally confirmed in the right to hold their estates without molestation as long as they did not abuse the privileges which were conferred upon them. They were not even called upon to prove their titles after 1739, except when it was in their interests to do so. This exemption placed them on a higher plane than other individuals or corporations.

The church lands were temporarily alienated in 1834 and 1846, because of an interruption in the friendly relations between the Spanish government and the papal court. In 1851 the breach was healed and the Spanish government guaranteed to the church full rights to all its lands and properties, "to acquire, hold and enjoy in propriety, and without limitations or reserve, all kinds of possessions, values,"³¹ etc. On December 4, 1890, the further right was conceded to the church and to the ecclesiastical cor-

³¹ *Sobre una reseña histórica*, 84-89.

PRESIDENTIAL SPECIAL AGENTS IN DIPLOMACY

HENRY MERRITT WRISTON

Wesleyan University

The unusual circumstances of the present diplomatic situation of the United States resulting from the European war and the revolution in Mexico have led the present administration to resort to the use of presidential diplomatic agents. The missions of ex-Governor John Lind and of William Bayard Hale to Mexico, and the errands of Col. E. M. House in Europe have aroused considerable discussion of their diplomatic status, which gives point to an effort to explain the basis for the employment of presidential special agents in diplomacy.

At no point is the Constitution more definite and specific than in dealing with the appointing power of the President. Part of Article II, Section 2 reads: "He shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments." The third section of the same article reads: "The President shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session." There would seem to be no loophole here by which the President could either create an office not before existing, or, unless there is specific statutory warrant, appoint an individual to office without senatorial confirmation. There seems, however, to be at least one class of exceptions—the

special agent¹ who serves in a diplomatic or semi-diplomatic character. His position the President alone creates; no such office is mentioned in the statutes. The President appoints him without reference to the senate, sometimes while that body is in session, and when appointment is made during a recess no provision is made for the expiration of the commission at the close of the next session of the senate. The President has never resorted, in the case of special agents, to that somewhat obvious subterfuge sometimes used in the case of postmasters—to commission during a recess, send in his name as a nominee to the senate which fails to confirm, and recommission as soon as the next recess begins. While apparently every other official agent, high and low, is appointed to a position created by the Constitution or by statute, and in a form definitely prescribed by the Constitution or statutes, the special agent constitutes an exception in both instances.

The position of special agent is nowhere mentioned in the law, except in a few appropriation acts, where men who have served in this capacity have been granted extra compensation by congress. The only statutory basis which can be claimed for them is section 291 in the Revised Statutes, which dates from May 1, 1810 but was preceded by acts of July 1, 1790 and February 9, 1793. It reads: "That when any sum or sums of money shall be drawn from the treasury, under any law making appropriation for the contingent expenses of intercourse between the United States and foreign nations, the President shall be, and is hereby authorized to cause the same to be duly settled, annually, with the accounting officers of the treasury in the manner following, that is to say: by causing the same to be accounted for, specifically in all instances wherein the expenditure thereof may, in his judgment, be made public, and by making a certificate of the amount of such expenditures as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient

¹ Moore: *International Law Digest*, IV, pp. 452-457, has the only list of special agents readily available. It does not seem to pretend to completeness, apparently is not correct in all particulars, and contains practically no discussion of the problems involved.

voucher for the sum or sums therein expressed to have been expended."

It is very clear that this act did not create any office in the sense that definite, specific positions are created, as was the case in the organization of the other departments and indeed of the remainder of the state department. Nor did this act give the President power to make appointments to any 'inferior office' without senatorial approval. On the other hand, it implied both a position and power of appointment without approval of the senate. If the President is to make payments upon his certificate, what are they to be for? They must be paid either to persons for performing duties of some character, presumably secret or confidential, or they must be applied to the purchase of gifts or other inducements customarily demanded by some types of government before treaties are formed. In the first of these alternatives there must be a person selected to do something in return for the payment: a position is implied. It is further implied that the appointment shall be vested in the President without the advice and consent of the senate. This appears from the fact that there is no provision for investigating the President's use of this fund; it cannot be inquired into unless, possibly, in case of impeachment.² If the President's choice were sent to the senate for confirmation, it would to some extent destroy the secrecy which the act was specifically designed to secure, a result contrary to all accepted rules of interpretation.

The second basis for this anomalous position lies in the well-known principle that the executive holds the power of initiative in foreign affairs. The passage in the Constitution which reads that the President "shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur" has never been interpreted to mean that the senate must be consulted in the negotiation of treaties. Exceptions may be found, but it has been the regular practice for the executive to negotiate treaties and present them only when complete to the senate for ratification. Even when

² This possibility was pointed out by President Polk, 29 Cong., 1 Sess., House Doc. no. 187, pp. 1-5.

that body insists upon changes, those changes are negotiated by the executive.

It is a fact not sufficiently emphasized, perhaps, that in order to negotiate in the name of the United States a special commission must issue from the President to cover each separate negotiation. Thus the secretary of state, for instance, must be separately "appointed" to make a treaty with another country. A minister to a foreign country may make agreements only in emergencies and must limit those to mere protocols containing the explicit statement that it is signed subject to the approval of the signer's government.³ In order to make a treaty with Spain, for instance, the minister to Spain must be given "full powers" by the President covering that particular negotiation. The minority report of the senate foreign relations committee, in upholding the appointment of William L. Putman and James B. Angell for the fisheries negotiation of 1887 without senatorial confirmation, relied on precedent. It pointed out that "the whole number of persons appointed or recognized [1789-1887] by the President, without the concurrence or advice of the senate, or the express authority of congress, as agents to conduct negotiations and conclude treaties, is four hundred and thirty-eight. Three have been appointed by the secretary of state, and thirty-two have been appointed by the President with the advice and consent of the senate. . . . An interval of fifty-three years between 1827 and 1880 occurred during which the President did not ask the consent of the senate to any such appointment. . . . The constitutional power of the President to select the agents through whom he will conduct such business is not affected by the fact that the senate is or is not in session at the time of such appointment, or while the negotiation is being conducted; or the fact that he may prefer to withhold even from the senate, or from other countries the fact that he is treating with a particular power, or on a special subject."⁴

³ Moore: *International Law Digest*, V, p. 179, quoting instructions to diplomatic officers of the United States (1897), p. 99.

⁴ 50 Cong., 1 Sess., Sen. Misc. Docs., II, no. 109, pp. 103-104.

These statements are substantiated by a list of all the persons employed by the United States in conducting negotiations between 1789 and 1887, showing the date and manner of appointment, the purposes, and the other offices held at the same time.⁵ There are probably some inaccuracies in the list. There is evidence to indicate that there are; but the only changes are changes of detail which do not affect the principle involved. Writing off some on the ground of error, and neglecting many more on the ground that they were commissioned during a recess, the figures are still an impressive demonstration of the principle supported.

In that list various types of men appear as selected to carry on negotiations on behalf of the United States. The most common type is the regular diplomatic officer. Thus there are many cases where the secretary of state is appointed to negotiate; there are many more where the minister or chargé to the country involved is deputed to treat. Such constitute the great bulk of cases; they are perfectly normal and regular. Others are only slightly less regular: for instance, where the minister to Prussia was commissioned to negotiate with some minor German state to which he was not regularly accredited, or when the chargé at the Netherlands was designated to conclude a treaty with the kingdom of the Two Sicilies. These instances are not seriously irregular, and are readily explicable on the ground that, lacking a full diplomatic staff, it was necessary to use persons for purposes other than those for which they had been regularly appointed. Beyond this irregularity there is a greater. Men appear in the list who, though officers of the national government, are detailed by presidential commission to negotiate treaties, or to perform other diplomatic tasks not germane to their normal duties. Members of the supreme court and officers of the United States navy appear on the list. Finally, there is a class yet more irregular, men holding no office under the United States, taken from private life and designated for a special diplomatic task, sometimes with the advice and consent of the senate, as W. R. Davie, sent with Oliver Ellsworth and Williams Vans Murray

⁵ Ibid., p. 110ff.

to France in 1799, but more often without confirmation by the senate.

Granted that this last class is furthest from normal, the fact remains that if the President alone may commission men to negotiate for the United States, as he certainly may, since he has done so in a large majority of cases; and if he has the right to use a diplomatic officer for a purpose for which he was not originally appointed, as he evidently has; and if he may use a member of the judicial department, or a member of an arm of the military service, without senatorial approval, it is exceedingly difficult to draw a clear line which would prohibit the use of a private individual in the performance of this peculiarly presidential function. This argument, so far as it is based upon the list of persons deputed to negotiate for the United States, applies only to such special agents as were commissioned to negotiate a treaty or treaties, and does not apply to the others, whose duties are of a different character, though properly described as diplomatic.

The third basis upon which this practice rests is international usage. Its defenders have very frequently resorted to this ground for argument. Buchanan, at the time a member of the senate, is thus reported in the *Congressional Globe* for May 1842: "There was no government on the face of the earth that had not secret agents abroad unless it were our own. . . . This amendment [Woodbury's], as he understood it, would deprive the executive of this power, a power so essential to the interests of any country that no government on the face of the earth was destitute of it."⁶

President Polk in refusing to divulge the uses made by Daniel Webster of the fund, provided under the act of May 1, 1810, pointed out that other governments had such funds absolutely at the disposal of the executive.⁷

In 1893 the majority of the foreign relations committee of the senate said: "There seems to be no reason why the government of the United States cannot, in conducting its diplomatic intercourse with other countries, exercise powers as broad and general

⁶ *Congressional Globe*, IX, p. 473.

⁷ 29 Cong., I Sess., House Doc. no. 187.

or as limited and peculiar, or special, as any other government. . . . In fact, there has been no limit placed upon the use of a power of this kind, except the discretion of the sovereign or ruler of the country."⁸

Many other instances might be cited where reliance has been put in congressional debates upon the fact that all governments have the right to appoint irregular special and confidential agents, upon whose appointment the legislative branch does not have even the customary financial checks.

The fourth basis upon which this type of appointment rests is necessity. The President is charged by the Constitution and laws with the management of foreign relations. If he is subjected to harassing limitations in delicate cases it may very well defeat the execution of his functions. Buchanan stated this forcibly. "It might become necessary very shortly—though he did not know whether he ought to allude to the fact—to send a special agent to the island of Cuba, and one to Santo Domingo; and, in such a case, to have a nomination made and confirmed by the senate, according to the ordinary method of appointing diplomatic agents, would defeat the very purpose of the appointment, because the necessary secrecy would not be preserved. If the President should hear of any movement in one of the islands belonging to the British government, upon the slave question, which was calculated to affect the interests of this country, he ought to proceed at once—with the secrecy of the grave itself, not letting his left hand know what his right was doing—and despatch a confidential agent to the spot, that he might be put in possession of early and authentic information upon every minute particular in relation to such a movement."⁹ This argument states the case clearly and concretely so far as the special agent for investigation is concerned.

It was stated with equal force, and made applicable to the case of special agents to negotiate treaties, in the correspondence which preceded the first treaty with the Ottoman Empire. Mr. G. B. English, whom J. Q. Adams, as secretary of state for

⁸ 53 Cong., II Sess., Sen. Report no. 227, p. 25.

⁹ *Congressional Globe*, IX, p. 473.

Monroe, sent to inquire into the possibilities of making a treaty, reported that he had interviewed the Captain Pasha, who was favorable to the United States, and who told him that the failure of Mr. Luther Bradish, sent some years before, was due to the activities of the ambassador of one of the European nations. The Captain Pasha advised that "the government of the United States . . . secretly authorize the commandant of their squadron in the Mediterranean to meet me in the Archipelago, with instructions to inform me precisely what it is that the United States wished to obtain of the Sublime Porte. I will communicate this overture to the Sultan himself. . . . If the Sultan should show himself favorably disposed, an arrangement advantageous to your country may probably be effected, whereas an American ambassador who should come to Constantinople to negotiate with the Divan, would probably find himself embarrassed by intrigues which he could neither discover nor control." "Should the ambassadors of foreign powers suspect the affair, which the presence of an ambassador would undoubtedly occasion, they would set their dragoman also at work to traverse his negotiations by offering more, if they could afford it, to frustrate the success of the new ambassador."¹⁰

These two illustrations serve to indicate the force of the argument from necessity. Other reasons might be cited to explain why the President has resorted to the use of special agents. Such reasons should, however, rather be classed as motives for the use than as bases upon which the use rests. They explain why, this type existing, it was selected; they would not, considered alone, justify the creation of the type. The true bases are the four just outlined. The use of the special agent rests upon a presumptive legal basis; second, on the recognized right of the executive to take the initiative in foreign affairs; third, on the practice of governments generally; finally, upon the argument from necessity.

Powerful, even compelling, as these considerations are, they have not sufficed at all times to convince the legislative branch

¹⁰ 22 Cong., I Sess., House Doc. no. 250, pp. 15-16-17.

of the legality of the appointment of special agents. Several times one or other branch of congress has debated some phase of the problems that center about this subject. Careful study of all these discussions¹¹ reveals clearly the following points. First, the issue has never been stated in a clean-cut, isolated manner. In consequence it is scarcely possible even in a single instance to determine with any exactness what congressional sentiment on the principle was at any given time. Second, the debates on this subject have practically without exception been partisan. If a majority of the senate favored the administration, the minority framed resolutions for purposes of political capital. If, on the contrary, the majority was hostile to the administration, the purpose was to harass and defeat it. John Quincy Adams was correct when he noted in his diary, "The parties in the senate have always voted for or against these resolutions according as they supported or opposed the President."¹² Third, the arguments presented in congress defending the practice have, in general, been stronger than those against it. Fourth, it seems fairly clear that, while it is impossible to determine the exact status of congressional sentiment at any given moment, the principle has, nevertheless, come to be generally recognized. Debates upon the subject appear in later times to be over a definition of terms rather than upon the principle involved.

There remains but one further problem,—to make a tentative classification of special agents and of the uses for which it has been considered that they might be most wisely and effectively employed. Any one of several bases for this classification might well be selected. It would be useful and of interest, for instance, to classify them with regard to the extent of their divergence from regular diplomatic status, or as to the *degree* of power conferred.

¹¹ The following debates are the chief ones in which the principle was directly or indirectly at issue: Resolution by Christopher Gore in the Senate, 1814; Resolution by John Branch in the Senate, 1825; Amendment to the Appropriation bill in the Senate by Levi Woodbury, 1842; Resolution by Senate Foreign Relations committee, 1883; Debate on the Fisheries Treaty, 1888; numerous resolutions in the House and Senate upon the appointment of Blount, 1893.

¹² *Memoirs of J. Q. Adams*, Vol. IX, p. 131.

It appears most valuable, however, to classify them according to the *nature* of powers conferred. On this latter basis they fall into two broad groups, those without 'full powers' to negotiate a treaty or treaties; and second, those with such full powers.

The first group, then, are those without treaty-making powers. They fall, in turn, into several classes, the first of which constitutes those sent for observation, investigation, and report, but without power to act. One of the most famous occasions of the use of special agents for this purpose was in the days of President Monroe. He commissioned Caesar A. Rodney, Theodorick Bland and John Graham during a recess of the senate, but since they served beyond the end of the next session they are not to be classed as recess appointments. They do not seem to have been given a formal commission, but rather a special passport which stated that they were "about to visit, in a national ship, on just and friendly objects, and at the special desire of the President, divers places and countries in South America" and requested that "whithersoever they may go, they with their suite, may be received and treated in a manner due to the confidence reposed in them . . . by the President of the United States, and to their own merit."¹³ They were not accredited to any sovereign or government and Secretary J. Q. Adams said, "They have, as you will perceive, no distinct diplomatic rank."¹⁴ They were allowed their expenses and a salary of six thousand dollars each. It was originally planned to have this money paid them out of a special appropriation for the purpose, but Henry Clay objected so strenuously that the appropriation for the contingent fund was increased and they were paid from that. These commissioners later submitted long and detailed reports to the President.

In contrast to these very public agents there have been many secret agents sent to make confidential reports. Two of these who were sent during the preliminary skirmishes which preceded

¹³ Moore: *International Law Digest*, IV, p. 453, says, "In 1816 President Monroe sent," etc. Monroe did not become President until March 4, 1817. These men were commissioned November 24, 1817.

¹⁴ *Annals of Congress*, 15 Cong., I Sess., Vol. II, 1464.

the negotiation of the first treaty with Turkey, Luther Bradish and G. B. English, have already been mentioned.¹⁵

Another class within this group contains those commissioned to countries or factions seeking recognition. Their function is to advise the President as to a proper course of action. Several have been sent at one time or other to Santo Domingo. John Hogan will serve as an illustration. He was commissioned February 21, 1845, during a session of the senate, for a period of six months and was allowed a salary of \$8 a day and necessary traveling expenses.¹⁶ This was paid out of the contingent fund. Later he put in a claim for extra remuneration, and by the general appropriation act of the thirtieth congress was given \$1250 more. It may be remarked that this grant, and others like it, constitute by implication a clear recognition upon the part of congress that the appointment of such agents is constitutional and legal.

Hogan's instructions pointed out that Santo Domingo was seeking recognition. "Before deciding, however, on so important a step, it is deemed advisable to take the course heretofore adopted by the government in similar cases by sending a special agent to examine into and make report to the government of the power and resources of the republic, and especially as to its ability to maintain its independence." He was told to report specifically upon the extent and limits of territory over which the Dominican government claimed and exercised jurisdiction, the character and composition of its population, the number, discipline, and equipment of the troops, the composition of the government, and its personnel, and the financial system and resources.¹⁷

Hogan was but one of a large group of such individuals. Others were Rev. R. R. Gurley, sent to Liberia, A. Dudley Mann, sent to Hungary, and A. B. Steinberger, sent to Samoa. It is impossible in a brief summary to detail the circumstances under

¹⁵ Above, pp. 487-8.

¹⁶ 41 Cong., III Sess., House Doc. no. 42, p. 11.

¹⁷ 41 Cong., III Sess., House Doc. no. 42, pp. 10-11.

which each of these served, but the agent to Santo Domingo is fairly typical.¹⁸

The third class belonging to this group includes those sent to open the way for renewing ruptured relations. Typical of this class is William S. Parrott. His instructions, dated March 28, 1845, make clear the nature and purpose of his mission. "All diplomatic intercourse having been suspended between the governments of the United States and Mexico, it is the desire of the President to restore such an intercourse if this can be effected consistently with the national honor. To accomplish this purpose, he has deemed it expedient to send a confidential agent to Mexico. . . . The great object of your mission and that which you will constantly keep in view in all your proceedings, is to reach the President and other high officers of the Mexican government and especially the minister of foreign affairs; and by every honorable effort to convince them that it is the true interest of their country, as it certainly is, to restore the friendly relations between the two republics. Should you clearly ascertain that they are willing to renew our diplomatic intercourse, then and not till then you are at liberty to communicate to them your official character and to state that the United States will send a minister to Mexico as soon as they receive authentic information that he will be kindly received."¹⁹ Parrott's favorable report led to the appointment of John Slidell as minister and himself as secretary of legation in a futile effort to reopen intercourse. The classic instance of this sort of agent is Washington's use of Gouverneur Morris, in a much less formal way, to reopen negotiations with Great Britain in 1789.²⁰

The fourth class belonging to this group consists of special agents sent to exchange ratifications of treaties. The best illustration is the case of Edmund Roberts, who having made treaties with Siam and Muscat, was given a new commission for the purpose of exchanging the ratifications with a salary approxi-

¹⁸ Cf. Moore, *International Law Digest*, Vol. I, p. 214.

¹⁹ Moore, *The Works of James Buchanan*, Vol VI, pp. 133-134.

²⁰ Sparks, *Washington*, Vol. X, p. 43.

mately that of a chargé.²¹ Mention is made in the senatorial debates on Woodbury's amendment²² of two men sent to Central America as special agents of this type. One was William S. Murphy sent by Daniel Webster, while secretary of state, with a salary of \$8 a day and necessary traveling expenses. It was explained that he was sent to procure the ratification of a treaty. In retort, considerable fun was made of an individual named Stevens, alleged to have been sent out by the previous administration accredited to a government that did not exist. The explanation, made by Senator Woodbury, was that he was sent to exchange the ratifications of a treaty made by a former chargé d'affaires.²³

The fifth and last class of special agents who belong to the group without power to make a treaty, are those sent to compose or adjust a revolutionary situation and given for that purpose very wide powers. The most recent of these appointees was John Lind to whom was committed the task of eliminating Huerta from the field of Mexican affairs. An early and fairly typical example was R. M. Walsh, who was sent in 1851 to Santo Domingo and Haiti. He was directed to act in conjunction with representatives of France and England and to negotiate a peace between the two sections of the island. He conducted a tedious negotiation with the emperor of Haiti, accompanied by broad hints of intervention.

The most famous of this class was James H. Blount, who went to Hawaii in 1893 and hauled down the American flag and undid the work of the revolutionists who had overthrown the queen's government. Blount was definitely commissioned and given a letter of credence to the president of the executive and advisory councils of the provisional government of the Hawaiian Islands. He was directed, first, to investigate; second, he was given an authority as to "all matters touching the relations of this government to the existing or other government of the islands, and to the protection of our citizens therein," paramount to that of

²¹ 25 Cong., II Sess., House Reports, no. 317.

²² Above, p. 489, note.

²³ 27 Cong., II Sess., Sen Doc. no. 253. *Congressional Globe*, Vol. IX, p. 469.

the regular minister. His exercise of that authority resulted in the return of the queen to power. It may be remarked that this mission was intended not so much as an interference in the internal affairs of a neighbor state as a rectification of the situation brought about by the unauthorized interference in the domestic affairs of Hawaii by Minister Stevens. In both the Walsh and Lind cases, however, there was a clear intent to readjust internal conditions within neighbor states for the existence of which no agent of the United States was at all responsible.

These brief citations of typical cases may serve as a basis for a tentative classification of the first group, which includes; first, those whose powers are limited to general report, public or confidential; second, those whose powers are limited to report as to the advisability of extending recognition to a country or government; third, those sent to reopen negotiations with a power with whom the relations have been broken off; fourth, those sent to exchange ratifications of treaties previously made; fifth, those with power to interpose in the domestic concerns of neighbor nations and to compose differences inimical to the vital interests of the United States.

The other broad group includes all who have been formally commissioned with power to negotiate treaties. The first class within this group consists of those with power to make a treaty of peace, and appears to be very small. It is true that the commissioners to negotiate peace with Spain in 1898 seem never to have been nominated to the senate, but they were appointed and their work was begun and completed during a recess. The commissioners to negotiate peace at the close of the War of 1812 were appointed during a recess but their nominations were sent to the senate as soon as that body assembled, with a definite statement that unless the appointments were confirmed their commissions would expire with the end of the session. The case of Nicholas Trist is of a different sort. He was appointed to proceed with the army of General Scott into Mexico as peace commissioner and was given not only plenipotentiary powers but a remarkable authority over both army and navy. In secret orders General Scott was instructed in the following terms:

"Should he [Trist] make known to you in writing that the contingency has occurred in consequence of which the President is willing that further active military operations should cease, you will regard such notice as a direction from the President to suspend them until further orders from this department."²⁴ Similar orders were sent to Commodore M. C. Perry in command of the gulf fleet.²⁵ There has thus far appeared no parallel among special agents of this extraordinary power, save only in the case of Blount.

The reasons why this unusual form of peace negotiation was adopted are stated clearly in the instructions to Trist and in Polk's diary. "It is deemed probable that the Mexican government may be willing to conclude a treaty of peace with the United States. Without any certain information, however, as to its disposition, the President would not feel justified in appointing public commissioners for this purpose. . . . After so many overtures rejected by Mexico this course might not only subject the United States to the indignity of another refusal, but might, in the end, prove prejudicial to the cause of peace."²⁶ The other reason was partly political. "The success of Mr. Trist's mission I knew . . . must depend mainly on keeping it a secret from that portion of the Federal press and leading men in the country who, since the commencement of the war with Mexico, have been giving 'aid and comfort' to the enemy by their course."²⁷ The narrative of Trist's mission and of its result is too well known to need repetition here, but it will be remembered that, in its later stages, during which the treaty was actually negotiated, it was essentially a "self-constituted" mission.

The only other member of this class to whom it is necessary to refer is W. W. Rockhill, who, while the senate was in session, was invested by President McKinley in February, 1901, with "full and all manner of power and authority, for and in the name

²⁴ 53 Cong., II Sess., Sen. Rep. no. 227, pp. 44-45.

²⁵ *Ibid.*, p. 39.

²⁶ 30 Cong., I Sess., Sen. Doc. no. 52, p. 81.

²⁷ *Diary*, Vol. II, p. 483.

of the United States to meet and confer with any person or persons duly authorized thereto by the government of his majesty the emperor of China, and with the plenipotentiaries of the powers . . . and with him or them to conduct on the part of the United States, the negotiations for a settlement of the pending questions between the powers and China."²⁸

The second class in this group consists of men sent to make a treaty with a recognized nation with whom the United States had none before. The negotiation of the first treaty with Turkey illustrates this sort of special agent. After reports from several confidential agents it was decided to negotiate through irregular channels, first, because the normal mode of negotiation seemed likely to be hampered or frustrated by intrigue; second, because it seemed a less expensive plan inasmuch as it would allow the use of men on the ground, and also because it would not be likely to lead to a competition in bidding among the nations for favors; third, because failure would compromise "neither the national dignity nor future interests of the United States;"²⁹ fourth, because "in adopting this course the President acts in conformity with the wish he understands to have been, upon more than one occasion, expressed by the Sublime Porte, to the agents of the United States."³⁰ The man chosen for the work was Commodore Rodgers, in command of the Mediterranean squadron,³¹ but in 1828 a new commission was issued to Captain Crane, then commanding the Mediterranean squadron, and David Offley, consul at Smyrna, "to confer, treat, and negotiate with the government of the Sublime Porte, . . . concerning all matters of navigation and commerce between the United States and Turkish dominions; with full power to conclude and sign a treaty thereupon, or to give their assent to a capitulation therefor; transmitting the same to the President of the United States for his final ratification, by and with the advice and consent of the senate."³² This negotiation failed and later a new commission

²⁸ Moore: *International Law Digest*, Vol. IV, p. 457.

²⁹ 22 Cong., I Sess., House Doc. no. 250, pp. 15-17.

³⁰ *Ibid.*, p. 73.

³¹ *Ibid.*, p. 19.

³² *Ibid.*, p. 63.

was issued³³ to Commodore Biddle, Offlèy, and Rhind, who was to be "consul of the Black Sea," when that body of water should be opened to American shipping. These emissaries were successful, the actual negotiation being in the hands of Rhind, who was received by the Turkish government at the conclusion of the treaty "in the usual style of ambassadors" having horses sent to convey him to the palace and having other marked attentions paid him.³⁴

There are several other illustrations available, notably the negotiation of the first treaty with Sardinia by Nathaniel Niles in 1838, the negotiation of treaties with Switzerland, and with some of the German states by A. Dudley Mann, who was an active agent of the United States in Europe from 1846 to 1852, who later was assistant secretary of state and still later the Confederate agent, predecessor of Mason and Slidell, in Europe.

The third class which belongs to the group holding the treaty-making power are those sent to negotiate either original or supplementary treaties with barbaric states. A typical case is that of Edmund Roberts, a friend of Levi Woodbury, who had emphasized the necessity of better commercial relations in the Indian Ocean. When Woodbury became secretary of the navy, the advice of Roberts bore fruit in his own appointment, January, 1832, as special agent to negotiate treaties with Cochin China, Siam, and Muscat. He was also given blank letters of credence and told that if he found the prospects of opening trade with Japan favorable, he should fill in one of them and present himself to the emperor of Japan. His mission was kept secret and he was allowed a salary of \$6 a day with the necessary traveling expenses, but was promised more ample payment if his mission was successful.³⁵ Roberts has left his own account of his mission in a posthumous volume entitled, *Embassy to the Eastern Courts of Cochin China, Siam, and Muscat*.³⁶ His reception was that of a "foreign minister" and "ambassador." He succeeded in negotiating treaties with Siam and Muscat. These were duly

³³ September 12, 1829.

³⁴ 22 Cong., I Sess., House Doc. no. 250, p. 94.

³⁵ 23 Cong., II Sess., House Doc. no. 44.

³⁶ New York, 1837.

ratified by the senate without any division. There was no discussion of his status anywhere, and when he applied to congress for further remuneration in view of his success, the report of the house committee was favorable to compensating him with a salary equivalent to that of a chargé. The reason why neither this bill nor a later one for a similar purpose passed does not appear, but there is no reason to suppose that disapproval of his diplomatic "character" had any thing to do with it.

The last class belonging to this group consists of those given power to negotiate an auxiliary or explanatory treaty. Moore mentions that "Ambrose H. Sevier and Nathan Clifford were appointed by the President as special commissioners to negotiate certain explanations of the Trist treaty."³⁷ This appears to be a mistake for on March 14, 1848, Sevier was nominated to the senate as "commissioner of the United States, with the rank of envoy extraordinary and minister plenipotentiary to the Mexican Republic," and was confirmed on the same day.³⁸ Three days later the illness of Sevier caused Polk to send in the nomination of Nathan Clifford as "associate commissioner with the rank of envoy extraordinary and minister plenipotentiary." His nomination was confirmed March 18.³⁹ The only example seems, therefore, to be the peculiar mixture of regularity and irregularity which marked the appointment by President Cleveland of the secretary of state and of two private citizens, William L. Putnam and James B. Angell, to negotiate the fisheries treaty in 1887. The senate which had previously declared against negotiation of any sort rejected the treaty, not so much because of the manner of negotiation, as because of the fact of negotiation.

Such in tentative outline are the various types of special agents which have been employed in the diplomatic business of the United States.⁴⁰ The limited space of the present article

³⁷ Moore: *International Law Digest*, Vol. IV, p. 453.

³⁸ *Sen. Exec. Journal*, Vol. VII, p. 341-342.

³⁹ *Ibid.*, 343.

⁴⁰ The regular diplomatic powers of naval officers fall outside the scope of this article. For the more important instances of the employment of naval officers as special agents see Paullin: *Diplomatic Negotiations of American Naval Officers*. It may further be noted that Indian treaties were usually made by presidential agents. (Cong. Debates, 1825-1826, Vol. II, pt. I, col. 608.)

has prevented fulness of detail and exhaustive enumeration of cases such as the writer hopes to present at a future date. The only object has been to select significant instances and examine the main features of their application as a means of illustration. It seems clear that in most cases the use of the special agent was entirely justified and that without the employment of such an irregular agent many problems would have been much more difficult of solution, if not insoluble. Opportunity for secrecy, promptness, and the avoidance of compromising situations have all been facilitated by the use of special agents. In some few cases the motive seems to have been to preserve the initiative in foreign affairs in the hands of the President. This is true in the Trist case, but more notably so in the Putnam-Angell case where Cleveland acted in a way which was deliberately contrary to senatorial sentiment. Much criticism has been directed at the use of special agents, but this has thus far failed to reveal any misuse of the contingent fund in this respect, or any use of the special agent otherwise than for purposes which the President and his party in the senate could defensibly allege were the interests of the United States.

PROBLEMS OF PERCENTAGES IN DIRECT GOVERNMENT

C. O. GARDNER

University of Cincinnati

It may be assumed at the outset that any government based on the democratic principle should, regardless of the form it may take, reflect existing public opinion. The actual method by which expression may be given to the will of the people is of secondary importance. We have relied, in the past, and are still relying on representative institutions for the performance of this prime function of democratic government. Although satisfactory results have, on most occasions, been obtained, numerous instances are on record in which the action of the people's representatives has been at variance with definitely formulated public opinion. Such instances have been pointed to by critics as indicating serious defects in the working of the representative system.

To remedy these defects the devices known as the initiative and referendum were conceived and incorporated into many state constitutions. These instruments of government enable the voters, by means of the ballot, to supplant or supplement laws enacted by their representatives by laws of their own making. They were designed not to overthrow representative government but to prevent its diversion from its proper sphere of activity. When legislation does not seem to conform to public opinion the people may, by direct exercise of the law-making power, correct the error by popular vote, and the result is to be taken as the final word in determining what the will of the people really is on the subject in point. Public opinion is thus to find expression in the will of the electorate through the balloting process.

Conceding the possibility of discovering public opinion by means of popular voting the difficulty arises of determining un-

der what conditions the desired result is attained. Laws may be enacted by vote of the people without much concern about the number of voters participating in the procedure, but if the voting process is to express public opinion as well as make laws the size of the vote becomes important. How large a group of the voters must be in agreement in order to have its opinion taken as public opinion? Manifestly no definite answer is possible. It is, of course, impossible to obtain a completely unanimous opinion on any measure. Such is, moreover, unnecessary. On the other hand most writers agree that a majority is the minimum to be expected; but a mere majority of those who express an opinion on a measure may constitute such a small portion of the total electorate that no one would seriously contend that it voiced the will of the people as a whole. The majority should, perhaps, represent a substantial part, although not necessarily a numerical half of all the voters in order to be considered as adequate.¹ Rousseau, the great apostle of democracy, realized the difficulty of the problem but reached the conclusion that the size of the majority should vary with the importance of the issue and the necessity for action. Measures of great moment, he states, should obtain the approval of an unusually large majority, while those of less concern, and those demanding immediate solution, may be passed by a smaller majority or even a majority of one.²

It may be of interest to determine to what extent our present day provisions for direct legislation measure up to the standard above suggested. All States except Delaware require some sort of a referendum on the adoption of constitutional amendments. In most of them (thirty-three in all) the proposed amendment must receive a majority of all the votes cast on the proposition, while in twelve, either a majority of the electors or a majority of votes cast at the election is required. Rhode Island

¹ See A. L. Lowell, *Public Opinion and Popular Government*, pp. 4-7. Mr. Judson King, one of the ablest advocates of direct government, declares that the initiative and referendum are designed to "clear the way for the rule of the numerical majority." "New Dangers to Majority Rule," p. 4.

² *The Social Contract* (Tozer edition), pp. 200-201.

and New Hampshire are the only States demanding extra majorities.³

In addition to these compulsory referenda on constitutional amendments eighteen States now provide for a popular vote on constitutional or statutory law by means of the initiative or referendum.⁴ Of these, thirteen require ratification by a majority of those voting on the proposed measure. Three use the same basis, but require that the vote cast on the proposition shall bear a certain relation to the total vote at a regular election at which some state officials are to be chosen. The Nebraska provision, for instance, stipulates that a majority vote on a proposed law shall suffice provided the favorable vote is equal to 35 per cent of the total vote at the election. Washington and New Mexico have similar provisions, but place the percentages of the total vote at the election at thirty-three and forty respectively. Finally, Oklahoma requires a flat majority of all voting at the election to adopt measures initiated by the people, and Nevada does the same thing with respect to laws submitted under the referendum.

It is thus seen that no attempt is made in any of these provisions to obtain the approval of more than half the eligible voters for the enactment of fundamental or statutory law. Only in a comparatively few States is assurance to be found that a law so enacted will have the approval of any considerable portion of the voters. This does not, of course, indicate that the process of popular law-making is an easy one. It is, in fact, often just the reverse, because of numerous obstructions and hindrances placed in the procedure before the vote is taken. But it is clear that most of our provisions for direct legislation do not attempt to guarantee that a majority of the voters shall favor a law before it becomes effective, although they do make it *possible* for such a majority to express its will and give effect to its expression.

³ Rhode Island requires a majority of three-fifths and New Hampshire a two-thirds majority. See J. Q. Dealey, *Growth of American State Constitutions*, p. 141.

⁴ Following are the States: South Dakota, Oregon, Montana, Oklahoma, Maine, Michigan, Missouri, Arkansas, Colorado, California, Arizona, Nevada, Nebraska, New Mexico, Ohio, Washington, North Dakota and Maryland.

Whether such a possibility has been realized may be seen by noting the operation of these provisions for direct legislation. As previously stated, provisions for the reference of proposed constitutional amendments are to be found in practically all the States. According to statistics compiled by Professor Dodd⁵ about three hundred constitutional amendments were enacted by the voters during the decade from 1899 to 1908. Of these about half (150) were considered by half or more of those voting and many received total votes sufficiently large to satisfy the most skeptical critic. But the remainder (149) were ratified and went into effect with less than half of those voting at the election at which they were submitted expressing any opinion thereon. In several instances the total vote on the proposed amendment was as low as 10 or 20 per cent of the vote cast at the election. A recent example of the same kind of voting is to be found in the adoption in November 1915 of a constitutional amendment providing for the referendum in the State of Maryland. Despite a vigorous campaign for the amendment it received consideration from but 31 per cent of those voting for the various candidates for governor.

However, direct legislation in the United States should not be judged entirely by results accomplished under the usual provisions for the reference of constitutional amendments. It is well known that many such references are to be had only under conditions that seem almost to have been designed to discourage an alert electorate, even should such a thing exist. The votes on constitutional amendments should be supplemented by results obtained in States recently adopting complete initiative and referendum provisions, and in the various local communities where direct government is now to be had. Many of these provisions have been so prolific that the field thus subject to survey is an enormous one.

If by majority rule is meant popular approval of more than half of the electorate, it will, of course, rarely if ever be found anywhere. If those who do not participate in any manner in an

⁵ W. F. Dodd, *Revision and Amendment of State Constitutions*, Appendix.

election are excluded—in other words counting only the active voters in determining the majority—our popular votes on measures are sometimes although not usually successful. A striking example of a vote which cannot be criticized as to size was obtained when, in 1912, Arizona adopted thirteen statutes and constitutional amendments. Nine of the thirteen received the approval of more than half of all the voters taking part in the election; all of them were considered by more than a majority of all the eligible voters of the State, including those who remained at home.⁶ Results equally as satisfactory are difficult to find, although here and there, particularly in local elections, one will find a referendum vote as large, and even larger, than the vote for candidates.

On the other hand, instances are all too numerous where comparatively few voters have devoted any attention whatsoever to measures submitted for their consideration. The affirmative vote on laws adopted by the people seems rarely to attain a size equal to or greater than half the vote at the election at which they were submitted, and the total vote cast for and against a measure is often much less than 50 per cent of the vote at the election. In some cases laws are adopted with scarcely more than one-fourth of all the voters at the election expressing an opinion one way or another. In 1912, for instance 15 per cent of the active voters of Colorado adopted a law providing for a merit system in the civil service, and the vote both for and against aggregated only 28 per cent of the vote at the election. Usually, however, the percentages are somewhat higher than this.

To one interested in expressing public opinion by popular voting election statistics are interesting and sometimes enlightening; but, as someone has remarked, there is nothing sacred about such percentages and for anyone inclined to view them in that light closer investigation often proves deeply disappointing. For instance, a referendum vote equal to 85 per cent of the vote for some candidate at the same election may appear at first glance as highly gratifying as showing great interest in the measure.

⁶ For the statistics see Lowell, *Public Opinion and Popular Government*, pp. 368-369.

But analysis of the vote may reveal the fact that a goodly portion of such assumed interest is purely fictitious. The percentage then loses much of its value. At best it can mean nothing more than that a given percentage of those voting at the election displayed sufficient interest to mark the ballot. From this it does not at all follow that the degree of interest is in proportion to the size of the vote.

It is well known that much voting, whether on men or measures, is haphazard to say the least. Just to what extent this is true must remain unknown. There are, however, sometimes present certain factors that render assistance in determining the question. When, as was true in Illinois, a fairly large vote is obtained on a proposition to amend certain specific sections of a banking law, with scarcely any explanation of the character of the measure prior to the election, and with none on the ballot, one may feel reasonably sure, with no other evidence than that furnished by common sense, that many of the votes have no meaning. Sometimes a change in the form of the ballot, the position of the measure on the ballot, or the wording of the proposition when submitted will have a very noticeable effect on the size of the vote. The adoption of the separate ballot in South Dakota and Idaho increased very materially the votes on measures,⁷ although a similar change in procedure in Michigan and New York seems to have had no such effect.⁸ In Illinois votes on referenda have risen and fallen consistently with each change in the method of balloting.⁹ Such facts tend to confirm one's suspicions that percentage figures should be taken with a grain of salt.

One frequently hears the assertion that, after all, the size of the vote in direct legislation is a matter of little moment. It is said that it is the intelligent, alert, interested citizen who votes and the illiterate, ignorant, disinterested citizen who abstains

⁷ Dodd, *Revision and Amendment of State Constitutions*, p. 279.

⁸ J. A. Fairlie, *Referendum and Initiative in Michigan*. *Annals of the American Academy of Political and Social Science*, Vol. 43, 148 (Sept., 1912).

⁹ See an article by the author on the "Working of the State-wide Referendum in Illinois," *AMERICAN POLITICAL SCIENCE REVIEW*, Vol. V, 394 (1911).

from voting. The habitual non-voter is conceived to be a sort of undesirable member of the body politic who could add nothing to the value of the results even if he should cast his ballot, and is, therefore, to be encouraged in remaining in modest retirement, while the active majority, or even a decided minority, proceed with the work of governing.

It is unfortunate that there is so little direct evidence to determine the character of the non-voter. That he is uninterested goes without saying; but it is by no means so certain that he is ignorant and illiterate. Those who assume that the votes on propositions referred to the people always come from the desirable members of the community seem to forget the existence, particularly in some of our large municipalities, of powerful political organizations and the influence they exert at elections. These organizations can usually be relied upon to bring out the vote when necessary and the vote thus produced can scarcely be said to represent, in all cases, the intelligence of the community.¹⁰ Recent surveys of election returns by wards in Cincinnati would seem to indicate that the non-voter is to be found in rich and well-to-do sections almost as frequently as in districts where ignorance and vice reign supreme. Such may not, of course, be true in other cities and it is perhaps true that in rural sections the least desirable elector is the non-voter. At the same time the assumption that those who vote on referenda represent the cream of the electorate may be questioned. The initiative and referendum may be used in the interest of bad government as well as good government, and the type of voter called out by the reference of a measure will probably depend upon the nature of the issue and the interests it affects.

Regardless of how liberal one is inclined to be in his interpretation of election returns it must be concluded that we do

¹⁰ An illustration somewhat to the point may be found in a recent election held in the city of Cincinnati when an ordinance granting a twenty-five year franchise to a street railway company was submitted for popular ratification. The ordinance was considered by many to be unduly unfavorable to the company and the prediction was current that if a large vote could be obtained it would be defeated. This prediction was verified by the results, for the measure was rejected with a much larger total vote than was anticipated.

not always get public opinion expressed with our systems of direct legislation. Although there are many instances to the contrary, and in some sections they are numerous, the fact remains that laws and constitutional amendments are too frequently enacted by very small parts of the electorate. When this happens the vote, aside from the point that it may or may not have produced desirable legislation, is, because of its size, defective as a reflector of the will of the community.¹¹ Moreover it opens the way for the introduction of the very evil that direct government was designed to cure, that is, legislation in the interest of special groups and classes. It is true that experience seems to indicate that the initiative and referendum have been more successful in preventing this sort of legislation than in encouraging it; but with their introduction into States where electoral lethargy is greater than in the States now using these devices the dangers of direct legislation by small minorities are likely to become more manifest.

That brings us directly to the question as to the desirability of changing the percentage requirements in order to insure that, where group interests are reflected in a popular vote, the group shall represent at least a substantial part of the total electorate. Is it feasible to require more than half the total number of votes to express a favorable opinion of a proposed law before it shall go into effect? Or is it desirable that a certain percentage of those who participate at the election shall be required to vote yes or no on a proposition in order to be certain that some considerable portion of the voters have considered the matter at all?

To those whose passion for majority rule outweighs all other considerations, the answer to the above inquiries is clear. By all means impose such restrictions as may be necessary to make sure that all statutes and constitutional amendments enacted by the people shall have the approval of a majority of the voters. In principle this conclusion would be logically sound, for it is in the vote of the majority that the will of the people is to find expression. However, if our experience with direct government has

¹¹ A small vote may, of course, indicate the absence of a clearly defined public opinion on the proposition. This is likely to be true when questions of a technical nature are submitted.

proved anything it is that such a restriction could and would have but one result. It would defeat practically every measure submitted unless some form of compulsory voting were used in conjunction with it. As already noted instances are on record where votes of sufficient size have been obtained, but they constitute an exception to the rule. In the past when attempts have been made to impose such restrictions propositions of all kinds have been uniformly defeated by apathetic voters and have gradually ceased to appear on the ballots because of hopeless despair of their success.

Now, it is believed that the initiative and referendum are too valuable instruments of good government to be thus destroyed. Conceding the point that they have not been uniformly successful in producing legislation by the majority it must be admitted that they have, generally speaking, come nearer doing so than have other schemes that have been tried. If this is the goal toward which we are striking then direct government should not be abandoned or be permitted to expire by atrophy in search of an ideal which for the present seems unattainable. Legislation in the interests of a minority is, of course, possible in representative government. No argument is necessary to convince us of that. Under our system of representation it not infrequently happens that the choice of the legislator is decidedly a minority choice. Moreover all that has been said concerning the apathy of the voters and the value of percentage figures in connection with the initiative and referendum may be applied with equal force to the election of members of our legislatures. Even though elected by a minority it is, indeed, possible for the representatives to register public opinion in laws; but there can be no adequate guarantee that such will be the result, and instances in which laws have been passed which palpably ignored a clearly defined public opinion are all too numerous. Majority rule is by no means assured in representative government. Minority control may likewise be possible under the initiative and referendum, but the controlling minority can scarcely be more vicious here because it is a different minority, as it is likely to be. Nevertheless the potential check afforded by the initiative and refer-

endum will itself in most cases warrant their retention as workable instruments even if they mean nothing more than a check of one minority over another.

But direct legislation has a positive value far greater than this. If it be true that there is something wrong with our government it is perhaps fundamentally due to the indolence, indifference or ignorance of the electorate. To cure our ills we must, therefore, reform the voters, and in this stupendous task direct government promises much. As Professor Reinsch has so well said, "This institution will assist the people, the body of the electorate, in the development of its political consciousness; the consciousness of power which it brings will assist in that direction. Secondly, it will make the body of the electorate more familiar with legislative problems and more interested. . . . nothing will so train the electorate to see the difficulties and problems of legislation, and to form an intelligent opinion about them, as having to solve these problems itself at times. Moreover, it will increase the interest of the people in the legislatures as being organs which are constantly engaged in dealing with these important matters."¹² Certainly if direct legislation has promise in this direction it would be folly to destroy its usefulness by imposing unworkable restrictions upon its operation. To do so would kill the goose, which, if it has not already laid the golden egg, is at least expected to do so.

Provisions, therefore, requiring an affirmative vote of a majority at an election for measures submitted by initiative or referendum must be considered as highly undesirable under existing conditions. Can the same be said of such requirements as have been recently incorporated into the constitutions of Nebraska, New Mexico and Washington, where the affirmative vote must not only be a majority of the votes on the measure, but at least from 33 to 40 per cent of the vote at the election? Such provisions should be tested by the same standard as has been applied to the more stringent requirement. Should their operation prove so disastrous as practically to destroy the use-

¹² "The Initiative and Referendum," *Proceedings of the Academy of Political Science*, Oct. 26, 1912, p. 158.

fulness of the initiative and referendum, they should not be tolerated despite the dangers that lurk in legislation by minorities. The degree of development of political intelligence and alertness should decide the question for any particular commonwealth. It is believed, however, that some of our States have shown that, with respect to them, such restrictions would not be onerous. When three-fourths of the voting electorate habitually attend to propositions submitted to them, as is true in Oregon, a requirement that a third of the total vote should be favorable to the measure is not unduly burdensome and is a step in the right direction.¹³ It should not be possible for 3 or 4 per cent of the active voters—and by active voters is meant those actually voting—to amend the fundamental law, as was done in Michigan and in Massachusetts in 1862. In general it might be said that if a measure submitted for popular ratification cannot receive the sanction of a fourth (25 per cent) of those voters who display some interest in elections, there is little reason for assuming that there is a public sentiment in favor of such legislation. Some such restriction may perhaps be desirable in some of our States.

There is another subject connected with the problem of percentages that deserves some consideration. In some of the States where the initiative and referendum have been called into operation measures repeatedly rejected by the voters by decided majorities have been resubmitted at each succeeding election, evidently with the hope that the proverbial fickleness of the populace would display itself in favor of the rejected measure. Thus fads and fancies of small groups repeatedly find their way to the ballot with monotonous regularity and seemingly with little chance of success. Recognizing the educative value of repeated submissions and recognizing also the right of the people to adopt fads in government if they so desire, it must be acknowledged that such submissions, when repeated year after

¹³ Such a provision would not have defeated a single measure of the fifty-one constitutional amendments and statutes adopted by popular vote in Oregon during the period 1904-1914. For the votes see J. D. Barnett, *The Operation of the Initiative, Referendum and Recall in Oregon*, pp. 241-253.

year with the same result, come to be nuisances; and the question arises whether it is not desirable to place limitations on the frequency of submission of the same proposition.

At the November (1915) election in Ohio one of the numerous measures submitted to popular vote was a constitutional amendment presumably designed to cure this evil. It provided, in substance, that a measure twice defeated since 1912 should not be subject to resubmission within a period of six years. It was heralded as a means of preserving the initiative and referendum, but evidently the voters suspected the particular brand of preservative for they overwhelmingly rejected the proposition. To prove their attachment to the principle involved the fathers of the measure immediately after the election made public announcement of their intention to re-submit the question at the earliest opportunity.

Notwithstanding such obviously insincere efforts to "safeguard" the initiative and referendum, the feeling is growing that some steps should be taken along this line. Oklahoma requires an unusually large petition of 25 per cent (the ordinary petition is only 5 per cent) to refer a measure within three years after its rejection by the voters. A more satisfactory method of accomplishing the same purpose might be found in a requirement that a proposition twice rejected by a decided majority should not be subject to resubmission for a period of three years, provided the vote, when submission was had, was large enough to be taken as a clear expression of public opinion.

A final problem involving percentages is presented by recent insistent demands for a shorter referendum ballot. In some States the number of measures submitted has grown to alarming proportions—a phenomenon attributed by many to the ease with which propositions may be placed on the ballot. The procedure usually requires that a petition for the reference of a question be signed by a certain proportion of the voters. Under the initiative, proposed constitutional amendments may be submitted by petition of from 5 per cent in South Dakota to 25 per cent in North Dakota. For statutes, petitions of 8 or 10 per cent are ordinarily required. In Ohio a petition of 3 per cent

is all that is required to bring an initiated bill before the general assembly, but an additional 3 per cent must be obtained to force its submission when the legislature refuses to act favorably or amends. In Maine the petition must be signed by 12,000 voters.¹⁴

The referendum is usually invoked by a smaller percentage of the voters than is required for the initiation of measures. With the exception of the flat requirement of 10,000 signatures in Maine, all States prior to 1911 accepted 5 per cent as sufficient. Since 1911, however, the States adopting the initiative and referendum have provided for larger percentages. For instance, Ohio and Washington require 6 per cent of the voters to sign referendum petitions, while Nevada, Nebraska and North Dakota require 10 per cent. Most proposals now before the state legislatures indicate the same tendency to increase the size of the required petition.¹⁵

Whether the tendency to increase the difficulties of getting measures on the ballot is desirable depends largely upon the purpose the petition is intended to serve. As one writer of authority has expressed it, the petition should be designed merely to "express a second" to a proposition for a popular vote. If this is the correct view it is manifestly unnecessary to require a very large proportion of the voters to perform this function. On the other hand care must be taken to prevent flooding the ballot with a host of trivial matters, and this can be done by requiring a petition of sufficient size to insure some real demand for a vote. A careful study of past experience would seem to indicate that, save possibly in one or two States, the overcrowded referendum ballot has not been due to measures submitted by petition.

In most of the States that have adopted the initiative and referendum the population is sparse. In them a petition of 6 or 10

¹⁴ See Beard and Shultz, *Documents of the Initiative, Referendum and Recall*, for detailed provisions in each of the States.

¹⁵ It may be added that when provision is made for direct legislation in local government the percentages required for initiation or reference are almost invariably higher than for the State as a whole. If 10 per cent is deemed adequate for the State the local requirement is usually 15 per cent or more.

per cent of the voters is not difficult to obtain. But this is not true in the larger States where a similar percentage would require an extra burden of labor and expense. Under the public opinion law of Illinois petitions of 10 per cent are required to submit state-wide questions. Even though the petitions are not verified experience has proved the procedure to be difficult.¹⁶ In Ohio signatures are obtained without serious difficulty, but in this State the percentage required is somewhat lower than in other States that have adopted direct legislation within recent years. Since it is undoubtedly true that difficulty in obtaining signatures increases with the size of population it follows that, as direct legislation is extended to the more populous States, no sanctity should be placed in percentages that have been regarded as normally desirable in other communities. It would, in fact, seem more desirable not to require a definite proportion of the voters to sign petitions but rather to follow the Maine plan of fixing the exact number of requisite signers.

Little is to be said in favor of such requirements as are to be found in Montana where petitions must be signed by 8 per cent of the voters in at least two-fifths of the counties of the State; or in Missouri, where each of two-thirds of the congressional districts must furnish signatures of 8 per cent of its voters. Unfortunately such provisions are coming to be more common. The Nebraska amendment of 1912 requires 5 per cent in each of two-fifths of the counties and a total of at least 10 per cent of the voters of the State. The North Dakota amendment of 1914 is even more stringent in that it requires 10 per cent of the voters in a majority of the counties. The same idea was reduced to an absurdity in the proposed Idaho statute of 1914 which required for the initiative and referendum the signatures of 15 and 10 per cent of the voters respectively in "each and every county of the State." Thoughtful observers of the working of direct legislation are in agreement in pronouncing such

¹⁶ In 1910 three questions were submitted in this State under the law above mentioned. The labor involved in obtaining the requisite number of signatures represented three months work at a cost of \$7000 although 2800 volunteer workers were in the field.

restrictions serious handicaps to the successful operation of the initiative and referendum machinery.

In conclusion it may be said that any immediate solution of the problem of percentages in direct government must be as far removed from the ideal as are existing conditions. Popular lawmaking should express public opinion with accuracy when such exists, and in doing so should perhaps reflect the consensus of a majority, or approximately a majority, of the voters. But in most of our States such a result is not attainable because of the character and disposition of the electorate. Under present conditions laws that do not reflect public opinion but rather the interests of special classes may occasionally be expected either with representative machinery or with direct voting. It is believed, however, that direct voting is, itself, gradually but surely reducing to a minimum the army of lethargic citizens and elevating the plane of political intelligence. If this continues the future will bring forth the time when "majority rule" will not only be possible but may be required in direct legislation.

PROPER SAFEGUARDS FOR THE INITIATIVE AND REFERENDUM PETITION

W. A. SCHNADER

Member of the Philadelphia Bar

There is probably no problem in connection with the practical operation of the initiative and referendum on which opinions differ so widely as upon that of the proper safe-guarding of the petition. In every direct legislation State a petition is required to invoke either the initiative or the referendum; and in practically every State certain safeguards have been established either by constitutional provision¹ or by statutory enactment, to prevent the initiative petition from being prostituted by unscrupulous enemies of direct legislation or by those whose zealous advocacy of the initiative and referendum overbalances their judgment.

At the outset, there is one proposition upon which all fair-minded students of government will agree, namely, that if the initiative and referendum has been established in a state constitution as a part of the State's governmental machinery, its operation should not be impaired or destroyed by indirection. Let the enemies of direct legislation openly endeavor to abolish it by amending the constitution; but failing in this purpose, they should certainly not so hobble the initiative and referendum petition under the guise of safeguarding it, as to nullify the institution itself. The framework of government should not thus be made the victim of political tricksters. Accordingly any provision ostensibly to protect the petition from misuse, which in reality aims to prohibit its legitimate use, is utterly improper and unfit.

¹ For analysis of constitutional provisions, see *Index Digest of State Constitutions* published by the New York Constitutional Convention Commission, 1915, pp. 761-791.

What, then, is the proper function of safeguards for the initiative and referendum petition? This inquiry compels another: What are the proper purposes of the initiative and of the referendum themselves? Two distinct answers to this question will be heard, inspired by two distinct schools of political thought. On the one hand, some will say that the purpose of the initiative and referendum is to educate the electorate in self-government to the fullest possible extent; to teach the voters that they are part and parcel of the government to which they pay tax tribute; that the laws under which they live and move are the creatures of their volition, not of a higher power to which they are subordinate. Reasoning along such lines, they will argue that it is desirable to have the greatest possible number of measures on the ballot at each election, and that the only proper safeguards for the petition are such as will prevent it from being tainted with forgery or fraud. Beyond these restrictions, the particular method of circulating the petition is immaterial. In other words, under this reasoning the only function of the petition is formally to bring initiated or referred measures before the people, meaning, of course, the voting population.

Another group insist that the initiative and referendum is but another check on representative government. Its function, under this view, is to prevent misrepresentation; to make possible the passage of laws which the legislature has refused to enact despite a public demand therefor, and to enable the voters to place their composite veto on measures which have been written on the books in defiance of the popular will. The education of the electorate in governmental action is an incident of the use of the initiative and referendum not its primary purpose; and the success of the initiative and referendum in any State is in inverse proportion to the number of initiated and referred measures. If few laws need be initiated and referred, the legislature is representing the electorate; and the initiative and referendum is accomplishing its highest purpose if it inspires in legislators a wholesome respect for the power of public opinion. Under this view, the petition is intended to represent the convictions of those who sign it; and any safeguard is proper which tends to prevent the

petition from representing only a certain amount of blind industry, rather than the settled belief of a stated percentage of the electorate that a certain measure should be written on the books by the voters directly or nullified after its adoption by the legislature. It is appropriate to keep in mind these two points of view in examining and passing upon the propriety of the safeguards which have actually been established in various direct legislation States, or in suggesting new safeguards. An analysis of provisions to protect the petition shows that they may be conveniently separated into five groups as follows: (1) Safeguards to protect the petition-signer; (2) Measures to prevent fraudulent signatures; (3) Provisions to enable fraud to be detected; (4) Penalties to punish fraud; (5) Safeguards to prevent measures for which there is no real demand from appearing on the ballot. The safeguards falling under these group-headings will be taken up in order.

I. SAFEGUARDS TO PROTECT THE SIGNER

In practically every State an initiative petition is required to contain a full and correct copy of the text of the measure which forms its subject matter. Accordingly any voter whose signature is requested may, if he chooses, read the measure in order to know at first hand what it contains. With regard to referendum petitions, the voter is not so generally given the benefit of this precautionary requirement for the reason, perhaps, that measures passed by the legislature are assumed to be somewhat familiar to the public, and, in any event, they are of public record, and may be examined by those who persist in knowing their contents.

That the publication in the petition itself of the text either of a proposed initiative measure or of a referred legislative act is a proper safeguard will doubtless not be questioned under any theory of the function of the initiative and referendum.

A second provision for the benefit of the signer is the requirement that across the top of every *initiative* petition shall be printed in large black-face type the words: "*Initiative Measure*

to be Submitted Directly to the People" or "*Initiative Measure to be Presented to the Legislature*" as the case may be. In only three States, California, Michigan, and Ohio, are distinctive petition-titles required for initiative petitions; and in no State is a distinctive title specified for use on a referendum petition.

To require the nature of the petition to be plainly declared in large type certainly appears to be quite a harmless provision, and it may perhaps serve to prevent the deception of unwary persons as to the purpose of the document presented for signature.

One other safeguard for the benefit of the signer is the constitutional requirement in Ohio,² that every circulator of a petition shall swear that the petitioners signed with knowledge of the contents of the petition, thus imposing on the circulator the duty of informing those whose signatures are sought of the exact nature of the measure which it contains. Ohio also permits what may be termed an optional safeguard for the signer. The proponents of any petition are allowed to present to the attorney-general of the State a short synopsis of the proposed or referred measure.³ If the attorney-general approves the synopsis it may be printed in capital letters on the petition. The entire text of the law must also be presented though the petition contains a synopsis. It might indeed be well to require, not merely to permit, an approved synopsis of the measure which it contains to be printed on every petition.

Another provision of the Ohio law requires the petition to contain a statement signed by the circulator, showing how much he is to receive, or has received, for his services in circulating the petition.⁴

II. SAFEGUARDS TO PREVENT FRAUDULENT SIGNATURES

The selection of proper safeguards to prevent wholesale frauds in procuring signatures for initiative and referendum petitions has been the storm centre of violent controversy even among the most ardent friends of the initiative and referendum. That

² *Constitution of Ohio*, Art. II, Section 16.

³ *1914 Laws of Ohio*, p. 119, Section 5175-29c.

⁴ *Ibid.*, Section 5175-29g.

fraudulent signatures have been discovered on petitions cannot be denied; and that fraud has been charged in connection with many other petitions is a fact which makes the safeguarding of the petition against fraudulent signatures an important problem.

In a celebrated Oregon case,⁵ the highest tribunal of the State found that in order to procure the necessary petition to refer and delay an appropriation for the University of Oregon:

The promoters were compelled to employ an attorney to secure the necessary signatures. This in itself was not an unusual course, as it is difficult to find citizens who are so devoted to their principles as to be willing to circulate such petitions without compensation. They employed Mr. Parkinson of Portland, who undertook to procure such signatures for 3½ cents a name. He employed a large number of circulators, who went forth into the highways and byways to procure signatures. Seven of these, at least, devised an easy method of earning their money. They would get together and pass their petitions around each signing a few names in a disguised hand, thus minimizing the chance of detection. These forgeries were clearly proved, mostly by the admissions of the parties. The petition as filed contained 13,715 names. Of these it is admitted that 3,778 are forgeries, perpetrated by dishonest circulators.

In 1912, both the secretary of state and the governor of Colorado called attention, in public documents,⁶ to the prevalence of fraud in the circulation of initiative and referendum petitions.

Up to 1913, eleven measures were submitted to the voters of Oklahoma under the initiative and referendum. Fraud was charged in connection with the circulation of the petitions for eight of the eleven measures. Seven other measures were kept from the Oklahoma ballot during the same period of time because of the discovery of fraudulent signatures upon petitions which, in each case, appeared to contain the required number of names.⁷

Charges of fraud have also been made in California and other

⁵ *State ex rel. v. Olcott*, 62 Oregon 277 (1912).

⁶ The secretary's of state annual report, and the governor's message, respectively.

⁷ See report of the secretary of state for 1912.

States. It is evident therefore that something should be done to prevent these practices. Even though the percentage of petitions alleged to have contained fraudulent signatures is comparatively small, and even though only a small proportion of all the signatures on fraud-tainted petitions are actually unlawful, it is desirable if possible to prevent all fraudulent practices arising out of the preparation of the petition, whatever the theory which underlies the initiative and referendum. Even if the petition serves no other purpose than to indicate that a minimum amount of energy has been expended to procure names of the number established by law, the legal requirement should be honestly fulfilled; and it is obvious that if its purpose is to represent not merely the industry of the circulators, but the convictions of the signers as well, fraudulent practices wholly subvert its intended function.

Admitted that fraud should be eliminated, how can it be done?

Practically all the States provide that only qualified electors shall circulate petitions; but the moral fiber of the electorate is neither uniform nor without blemish; and this safeguard while eminently proper is evidently comparatively ineffective. Similarly some States require every signer to state that he is a qualified voter, and in most States an affidavit is required either by the circulator of the petition, one of the petitioners or a qualified elector, to the effect that the signatures are genuine to the best of the affiant's knowledge and belief, that they were made in his presence, and (sometimes) that the signers are electors to the best of his knowledge and belief. These again are absolutely appropriate protective requirements, but their efficacy is open to serious question. The sanctity of the oath seems to be becoming less and less in popular esteem, and it is therefore doubtful just how far these precautionary steps go in eliminating dishonest practices.

In a number of States a warning is printed on the outside page of every petition to the effect that every person who shall sign the petition with any other than his true name, or shall knowingly sign the same petition more than once, or who shall

sign though he is not a legal voter, or otherwise violate the law relating to the signing of the petition shall be punished by fine or imprisonment. This again is a safeguard which all will doubtless acknowledge as absolutely proper. Its practical effect depends to some extent upon the penalty imposed on the law-breaker.

In addition to these precautions which are admittedly proper if effective, two States absolutely prohibit solicitation of names for pay, and one of them requires in addition, that all petitions be signed at the public offices for registration of voters, thus entirely doing away with the private circulation of petitions either by volunteers or for hire.

In South Dakota a statute enacted in 1913⁸ requires every circulator of a petition to take an affidavit stating, among other things:

That I have received no compensation whatever or promise of compensation for my services in circulating said petition.

The State of Washington has gone further than other State in its efforts to prevent the misuse of the petition. An act passed in 1915⁹ over the governor's veto provides that initiative and referendum petitions may be deposited with the registration officer of any city, town or precinct. The registration officers are required to give receipts for any petitions left with them, and to display in a conspicuous place in the office, placards bearing the words: "*Initiative or Referendum Petitions may be Signed Here.*" Every registration office in which *referendum* petitions shall be left for signing is required to be open for that purpose each Friday and Saturday evening between the hours of six and nine, for ninety days following the adjournment of the legislature. If initiative petitions are left for signing, the

⁸ 1913 *Laws of South Dakota*, ch. 203, p. 277.

⁹ 1915 *Laws of Washington*, p. 186. Compare provisions in the Michigan Constitution of 1908 (Art. XVII, Sec.2) requiring petitions for constitutional amendments to be signed at regular registration or election places under the supervision of and verified by the officials thereof. These requirements were omitted in the amendment adopted in 1914.

registration offices must be open Friday and Saturday evenings during ninety days preceding the time when the petitions must be filed with the secretary of state. Petitions may also be signed at any time when the offices are open for the registration of voters. It is the registration officer's duty always to have enough deputies on hand to accomodate voters desiring to sign petitions.

The procedure for signing a petition in the registrar's office is as follows:

If the applicant is not a registered voter, he must register in the manner provided by law before he may sign a petition. If he asserts that he is a registered voter, it is the duty of the registration officer to make such inquiries concerning the applicant's birthplace, age, occupation and place of residence as will identify him, and if the answers correspond with the information contained in the registration book, the officer must ascertain whether the applicant has previously signed the same petition. If not, he will be permitted to sign. The officer must then compare the signatures, and if the signature in the petition appears to be in the same handwriting as the signature on the registration book, the officer must enter upon the petition, opposite the signature, the residence-address, precinct-number, ward, and the name of the city or town of the voter as shown by the registration book. This being done, the officer must indorse the signature with his own initials in a space reserved for the purpose, and must also write on the petition the number given it by the secretary of state, when notice was given him, prior to the placing of petitions at the registration offices, that the particular measure would be initiated or referred.

If the signature on the petition does not correspond with the signature in the registration book, it is the officer's duty to refuse to initial and certify it.

When the proponents of the petition desire to retake possession of the various sections which have been left at the registration offices, they present their receipts for the same, whereupon the registration officers are required to draw red ink lines perpendicularly through all blank spaces for signatures, and to

fill out certificates showing the number of initialed signatures on the petitions, and stating that they have complied with all the formalities required by law.

As a complement to this system of petition-signing, the same statute contains very drastic so-called corrupt practices features. It makes it a gross misdemeanor for any person: (1) to sign or decline to sign a petition for any consideration, compensation, gratuity, reward or thing of value or promise thereof; (2) to advertise in any newspaper or by any other means that he will solicit signatures, or influence, or induce, or attempt to influence or induce, persons to sign or not to sign any petition, whether the solicitation or influence is to be for or without pay; (3) to solicit, procure, or obtain, or attempt to procure or obtain, signatures upon any petition; (4) to pay, or offer to pay, any consideration of any sort to a person for signing or refusing to sign a petition, or for soliciting signatures, or to vote for or against an initiated or referred measure; (5) to interfere with, or attempt to interfere with, the right of any legal voter to sign or not to sign a petition, by any other corrupt means or practice or by threats or intimidation; (6) in, or within one hundred feet of, the entrance to any registration office to solicit or attempt to induce any person to sign or not to sign a petition; or (7) wilfully to violate any provisions of the statute.

The sum and substance of this law is, therefore, to prohibit entirely the circulation of petitions, and to require voters to go to the petition instead of having the petition brought to them. Does this system provide an effective safeguard against fraud and if so, is it proper?

That fraudulent signatures should be next to impossible under the Washington system seems obvious. In addition to this advantage, it is equally clear that there need be no complicated system of checking the validity of signatures after the filing of the petition. In some States which permit the circulation of petitions, a public officer is required to compare the signatures on the petition with the registration books after the petitions have been filed. In California, for example, this is done by the county clerk or registrar within twenty days after any section

of the petition has been filed with him;¹⁰ but it would evidently be much easier to perpetrate fraud under the California than under the Washington system. Indeed it is difficult to imagine a more effective safeguard than that provided by this latest innovation. On this point there can, it is submitted, be no conflict of opinion.

Is the Washington system a proper safeguard, or will it tend to destroy rather than to protect the usefulness of the initiative and referendum? In answer to this question there will be violent disagreement. On the one hand, it will be argued that unless voters are willing to go to the registration office to sign a petition, they evidently possess no conviction on the subject which warrants the submission of the measure to the voters. To this assertion the answer will be made that voters, however deep their convictions, will not go to registration places to sign petitions and that the Washington system will therefore virtually emasculate the initiative and referendum. Whether this is a theory or a fact will be seen after the Washington law has been in operation. If it is true, it is clear that the Washington system is not a proper safeguard under the first or educational theory of the function of the initiative and referendum.

Under either theory of the office of direct legislation, it will doubtless be found that the percentage of voters required to sign petitions should be somewhat reduced if the Washington plan is to be adopted. If 5 per cent of the voters is the proper number to sign a petition which is carried about by voluntary or paid circulators, 3 per cent would probably be ample if the signers must seek the petition. If the percentages be fairly adjusted on account of the added inconvenience to the signer, the Washington system certainly seems to afford the ideal safeguard if the ultimate purpose of the initiative and referendum is to check misrepresentative government.

On the question of prohibiting paid circulation in States which still allow petitions to be carried to the voter, there is also a pronounced difference of opinion.

¹⁰ *Constitution of California*, Art IV, Section I.

The facts bearing on this controversy between the adherents and the opponents of paid name solicitation are as follows:

1. Practically every petition upon which fraudulent names have been discovered, has been circulated by paid solicitors. Indeed after extended investigation the writer knows of no instance in which fraudulent names have been found after their filing upon petitions circulated by volunteers.

2. The large majority of initiative and referendum petitions are circulated, in part at least, by paid circulators, who receive from three to fifteen cents the name. The persons hired for this work, as a general rule, beyond its financial return to them, have no interest in it. In some instances, however, where large organizations are back of the particular initiative or referendum movement, the paid circulators are recruited from the organization itself, and their only remuneration is an amount sufficient to compensate them for their loss of wages.

3. A number of petitions have been circulated wholly by volunteer work, and others have been circulated almost exclusively by this method, paid help being called in at the finish to procure a small number of signatures. Petitions which have been circulated by voluntary effort have in all but one or two instances contained measures which had been freely discussed by and before the public. Suffrage measures, liquor laws and amendments, and primary laws, seem to prevail. And it is alleged by those who know that it is next to impossible to procure sufficient names by voluntary effort for petitions containing less widely known measures, except perhaps measures which may properly be classified as "labor" or other legislation appealing to a large and influential class.

4. There appears to be no instance in which fraud has been charged in connection with the circulation of a petition wholly or largely by volunteer workers.

5. Those who are opposed to the paid circulation of petitions assert that in many instances the paid circulator resorts to every form of persuasion and often to misrepresentation to procure names. He insists that the voter's signature does not commit him to the measure or to its principles; it merely means that the

signer is willing to have the question brought before the electorate, and it enriches the circulator by a few cents. Or, it is charged, the nature of the measure is explained to suit the taste of the circulator's victim, as the circulator has prejudged the signer's particular governmental or political leaning. Very few persons read the measures contained in petitions, and as a result signatures are often obtained on petitions to which the signers are unalterably opposed.

The facts given do not prove conclusively, of course, that paid petition circulating breeds fraud; it may have been only a coincidence, that the instances in which fraud has been found were petitions circulated by persons for hire. But it does seem clear that where the entire work of procuring the signatures necessary to secure a petition has been done by volunteer workers, the petition is much more likely to show a settled desire for or opposition to the initiated or referred measure than a petition completed by workers having no interest whatever in the measure itself. Certainly if the initiative and referendum are to be a governmental safety valve, or to use the President's simile, like the musket over the cabin door, to be taken down only in time of danger, it is desirable to encourage voluntary work in soliciting signers to petitions, and to discourage or even to prohibit circulation for pay.

If, on the other hand, the petition is a mere formality, why require a large number of meaningless signatures to be procured? Would it not be far better to require petitions to be signed by only a few voters and permit them to be filed upon the payment of a fee to the State equivalent to three or five cents for every name now required?

To illustrate: Suppose a chamber of commerce determines to initiate a "blue sky" law. There is no known public sentiment for the measure. It has never been before the legislature and few voters understand its meaning or its purpose. Its proponents, believe, however, that once the measure is initiated it will excite popular interest in all quarters. Twenty thousand names are required on the petition. The proponents of the measure realize that the necessary names will not be procured by volun-

teers. They advertise for circulators at three cents the name. There are many applicants, and in five days the petition is complete at a cost of \$600. Evidently the petition is not the spontaneous expression of 20,000 voters that their legislature has misrepresented them; and if petitions are to be allowed under such circumstances, why not allow them to be filed upon the payment of the State of a substantial fee, discounted perhaps, according to the number of signatures which have been procured by volunteer circulators? The result would be the same as that obtained under the present method, at the same time that there would be less trouble and expense to the sponsors of the initiative or referendum campaign, and no inducement whatever to the perpetration of fraudulent practices. Fees thus paid to the State could be used to defray *pro tanto* the expenses of giving proper publicity to the measures placed upon the ballot.

Ohio follows what was probably intended as a middle course on the question of paid circulation. Every circulator is required to state on the petition over his signature, exactly what he is to receive for his services. To this requirement, it will be difficult for anyone to take exception.

To summarize, it appears that proper safeguards to prevent fraudulent practices in connection with the procurement of signatures depend upon which theory of the function of the initiative and referendum we accept.

If direct legislation is to be merely a specific for non-representation or misrepresentation, the petition should bespeak the convictions of its signers. It should be prepared without the artificial stimulus of the professional name procurer, or, perhaps, it should be signed at the registration place under the direct supervision of public officials. In this event, and also if solicitation of names for pay be forbidden, the number of names required should be fixed with due regard to the purpose of the initiative and referendum, and in such a way as to promote and not to destroy its usefulness. Existing percentages in direct legislation States would be, generally speaking, too high.

If, on the other hand, the initiative and referendum is primarily a great educative institution, the petition is a mere

matter of form. It does not necessarily represent anything, but is intended to prevent the ballot from being literally swamped with measures. This being so, any deterrent will serve just as well as the requirement that each petition contain a huge array of names. A fee for filing the petition, large enough to prevent the excessive submission of measures would eliminate the fraudulent practices now alleged to be in vogue, and would assist in paying the expenses incident to the proper operation of direct legislation.

III. SAFEGUARDS TO ENABLE FRAUD TO BE DETECTED

In States which allow petitions to be circulated among the voters, it is usual to require each signer to give certain information with his signature which will make possible the detection of fraud by the public officer charged with the duty of checking up the petition. The signer is usually required to state his residence, giving street and number, if any. In some States he must also give the date of signing and the ward and election precinct in which he lives.

Any such safeguards are eminently proper under any theory of the purpose of the initiative and referendum.

In most States petitions need not be compared with the registration lists; the secretary of state is merely required to ascertain if a petition contains the requisite number of qualified voters. This is not the case in California and Ohio where the county clerk or registrar is required carefully to examine any sections of a petition circulated in his county with a view to the discovery of any fraudulent signatures.¹¹ To make such an examination possible, the California constitution further provides that no section of a petition may be circulated in more than one county, and that all the sections circulated in any one county must be filed with the county clerk or registrar. An Ohio statute establishes practically the same system.¹²

¹¹ *Constitution of California*, Art. IV, Section 1; *Laws of Ohio, 1914-1915*, p. 295, Gen. Code, Section 5175-291.

¹² *Ibid.*

The California and Ohio safeguards seem above criticism; their only result if properly administered will be to preserve the integrity and honesty of the petition.

IV. MEASURES TO PUNISH FRAUD

In a number of States besides Washington stringent corrupt practices acts and constitutional provisions are in force, applying to the circulation of initiative and referendum petitions. In New Mexico the constitution makes it a felony to abuse the petition in any one of several ways.¹³ The Ohio legislature in 1914 enacted the most recent corrupt practices statute applying to petitions.¹⁴ It inflicts a severe penalty upon any person who directly or indirectly:

- (1) Misrepresents the contents of a petition;
- (2) Pays or offers to pay any voter for signing a petition;
- (3) Promises to help another to obtain appointment to office as a consideration for obtaining signatures to a petition;
- (4) Obtains signatures on the strength of a promise of the above type;
- (5) Alters in any way a petition after it has been filed;
- (6) Fails to file an itemized statement within twenty days after he has filed a petition showing:
 - (a) All moneys paid for circulating the petition,
 - (b) Names and addresses of persons to whom payments are made,
 - (c) Names and addresses of persons who contributed to the fund to pay for circulating the petition,
 - (d) The time spent and salaries earned while circulating or soliciting signatures to petitions by persons who were excused from their regular employment by their employers so that they might procure names,

It is beyond dispute that the severest penalty consonant with modern thought is not too harsh for the person who violates the sanctity of the ballot or who attempts to abuse any part of our duly constituted governmental machinery; and every direct legislation State should therefore throw around the initiative and referendum petition, the protection of corrupt practices provisions such as those now in force in Ohio.

¹³ *Constitution of New Mexico*, Art. IV, Section 1.

¹⁴ *1914 Laws of Ohio*, p. 119; cf. *Laws*, 1914-1915, pp. 295, 443.

V. SAFEGUARDS TO PROTECT THE ELECTORATE AGAINST THE
PETITION

There is one other class of safeguards to be discussed. Certain measures are necessary to prevent the initiative and referendum from being overworked. The preventive most frequently suggested is the elimination of paid name solicitation. This has already been discussed, under another heading. Unquestionably to compel every petition to be completed exclusively by volunteer effort, will result in fewer initiated and referred measures. If the percentage of required signatures is properly adjusted so as not to render the use of the reserved powers impossible in appropriate cases, many persons would welcome such a result. To others it seems desirable to place the least possible restriction on the initiation or reference of measures. They therefore object strenuously to the prohibition of paid name getting merely to restrict the free exercise of direct legislative powers.

Another safeguard exists in quite a few States in the shape of a requirement that the stated percentage of signers be procured in a given number of counties or congressional districts. For example, in Missouri an initiative petition must bear the signatures of 8 per cent of the voting population, and included in the 8 per cent there must be 8 per cent of the voters in two-thirds of the congressional districts of the State.¹⁵ Somewhat similar provisions are contained in the constitutions of Montana,¹⁶ Nebraska,¹⁷ Ohio,¹⁸ and North Dakota.¹⁹ The purpose of this requirement is to prevent measures from appearing on the ballot which are of interest to only a small section of the State, which may, however, be able to supply a petition containing the requisite number of signers. If this restriction renders it practically impossible to procure the necessary number of signers to any petition, it is obviously not a safeguard but a barrier, and is

¹⁵ *Constitution*, Article IV, Section 57.

¹⁶ *Constitution*, Article V, Section 1.

¹⁷ *Constitution*, Article III, Section 1 A.

¹⁸ *Constitution*, Article II, Section 1 B.

¹⁹ *Constitution*, Article II, Section 25.

improper. This is certainly true of the provision of the New Mexico constitution requiring not less than 10 per cent of the voters of each of three-fourths of the counties of the State to sign petitions.²⁰ If, however, the number of districts through which the petition must be circulated is reasonably small, let us say not more than one-half of the State's territory, it seems quite proper to require that the petition give evidence of more than an entirely local interest in the proposed or referred measure. Some of those most interested in the success of direct legislation have expressed themselves to the writer as not opposed to this safeguard.

In conclusion it is evident that the present tendency is to increase the safeguards surrounding the initiative and referendum petition, especially in so far as the prevention of fraudulent signatures is concerned. This tendency is highly commendable if honestly conceived and properly tempered with practical judgment. If the people of a State have no further use for the initiative and referendum, they should abolish it; and, of course, if a majority of the electorate desire direct legislation to be retained but shackled, they are within their prerogative. But a few office holders have no right to assume to restrict the usefulness of these institutions by requiring unfair and impossible formalities in connection with the circulation of petitions.

The recent legislation in Ohio appears to be unobjectionable, and intended only to prevent improper practices. The Washington legislation, on the other hand, seems too strictly to confine the usefulness of direct legislation. Its theory may be correct, but practically it seems very doubtful whether 10 per cent of the State's voters will ever go to the registration places to sign an initiative petition or 6 per cent a referendum petition.

²⁰ *Constitution*, Article IV, Section 1.

RECENT EXPERIENCE WITH THE INITIATIVE AND REFERENDUM

ROBERT E. CUSHMAN

University of Illinois

The more intensively one tries to study the interesting phenomena of direct legislation the more humble does he become. To look closely, for example, at the two hundred and ninety-one constitutional and legislative measures which the people of thirty-two States voted upon in 1914 is to be impressed with the number and significance of the things about that remarkable election which one cannot possibly know. How superficial at best must be our insight into that complex of social, political, economic and human forces which lay back of the presentation of those measures and the popular decision upon them. It is in full realization of the peril which lies in the way of sweeping classifications and glib generalizations that the conclusions drawn in the course of this brief discussion of the recent experience with the initiative and referendum petition are offered with considerable hesitancy.

I

There is an aspect of recent experience with direct legislation however, which may be analyzed with more or less accuracy. We can determine the extent to which initiative and referendum petitions are being used and it is apparent that the number of proposals thus submitted by popular action is increasing. Twenty-seven more initiative and referendum measures were presented to the people in 1914 than in 1912. This means however, a broader geographical application of direct legislation rather than a general increase in the average number of laws submitted in the individual States. The Oregon ballot of 1912 still holds the record in presenting the largest number of initiated or re-

ferred laws which ever confronted the voters of a single State in one election. On the other hand the circulator of petitions seems nowhere to be growing weary of his task and in some States is more energetic than ever.

Critics of the system have long declared that direct legislation would rob the state legislator of his dignity and destroy his sense of responsibility to the people. He would become a mere automaton and the important work of legislation would be carried on at the polls. Needless to say no such complete emasculation of state law-making bodies has anywhere occurred. The legislators in Oregon, Washington or California still grind out laws with as great rapidity and steadiness as though they were paid for their statesmanlike labors by the piece instead of by the day. It is nevertheless a matter of some concern that in the larger direct legislation States there is a tendency on the part of the legislature to submit an ever increasing number of proposals to the people for ratification. Twenty-two of the forty-eight measures presented to the people of California in 1914 and nine of the eleven presented in 1915 were placed on the ballot by the legislature itself while the legislators of the other initiative and referendum States were only slightly less active in this way. The legislature must, of course, refer its proposed constitutional amendments to popular vote, but its willingness to refer numerous statutes in addition would seem to indicate a readiness to share its burdens and responsibilities. The state legislator is certainly not jealous of any competition which may arise in the field of law-making.

It may perhaps be interesting to note that the initiator of laws continues to be much more energetic on the whole than the reformer who utilizes the referendum. This is strikingly apparent in Oregon where the simple and direct expedient of writing one's own law is vastly more popular than the more uncertain process of lobbying it through the legislature. There is also a slight tendency to increase the number of constitutional amendments submitted by initiative petition as compared with the statutes initiated or referred. This practice of inserting into the constitution detailed provisions which ought to be enacted

in the form of statutes is much to be deplored. It is small consolation moreover, to reflect that the process bids fair to continue, in part at least, by reason of its own momentum since detailed administrative provisions in a state constitution can be changed to meet new conditions only by means of other constitutional amendments.

There is recently discernible a marked increase in the practice of repeatedly submitting by means of initiative petition measures which have previously been defeated by the people. It will be recalled that woman suffrage was three times rejected at the polls before it was finally adopted by the voters of Oregon. In 1914 a dozen previously rejected measures were again presented to the people, while in the November election of 1915 two of these measures reappeared in California and two in Ohio. Ohio, in fact, has had a very curious experience with those proposals which like Banquo's ghost will not down. Seven times since 1912 have the voters of that State been called upon to repeat their decisions regarding measures presented to them. A state-wide policy in regard to the liquor traffic has been before the Ohio voters in the last four elections. This practice of persistently submitting the same question is severely criticized on the ground that a measure which a majority of the voters disapprove may finally win by default as it were merely because its opponents have grown weary of the monotonous task of voting it down. On the other hand the proponents of woman suffrage and prohibition, the most common legislative perennials, feel that in no other way can they so effectively carry on their educational campaigns as by continually placing their proposals upon the ballot. They regard perseverance in this direction as a cardinal virtue. Whatever the merits of the controversy may be, there is a strong body of opinion in favor of requiring an interval of six or eight years to intervene before a defeated measure may be submitted to popular vote a second time.

There are some interesting recent developments in the direct legislation States relating to the use of emergency clauses under which measures of immediate importance to the health, safety and welfare of the State are permitted to go into effect without

the ordinary delay which makes possible the filing of a referendum petition. The friends of direct legislation have jealously watched the extent to which the state legislatures have made use of these emergency clauses for the purpose of preventing laws from being referred to the people. In 1912 Oregon adopted a constitutional amendment forbidding the declaring of an emergency in cases of taxation and exemption. Another curb on the possible abuse of the emergency clause has lain in the power of the governor to veto either the entire bill or merely the section of it in which the emergency is declared. This partial veto of the governor was used for this purpose four times during the 1915 session of the Washington state legislature. During the last year still another protection against the abuse by the legislature of the emergency clause has come into prominence. This is the determination by the supreme court of Washington in the case of *State ex rel Brislawn v. Meath* (147 Pac. 11, May, 1915) followed in three subsequent cases, that whether or not an emergency actually exists which should exempt a statute from the operation of the referendum is a question which the courts will examine and settle. This doctrine is in direct conflict with that announced by the supreme court of Oregon in 1903 in the case of *Kadderly v. The city of Portland* (44 Ore. 118), and it permits any interested citizen to resort to the courts if he feels that the legislature has abused its power in declaring an emergency. An examination of the session laws of Oregon and Washington for the last two legislative sessions does not, however, disclose any noticeable tendency toward a wholesale and unwarranted use of the emergency power.

II

A brief consideration may be given to the classes who at present are using the initiative and referendum petition. It is perhaps natural that a more or less steady popular rejection of their schemes should somewhat dampen the enthusiasm of those ardent spirits who believe that every hardship or injustice to which mankind falls heir can be alleviated by the enactment of statutes of a millennial type. A glance at the recent ballots from the

Pacific States reveals a marked abatement in the zeal of the Utopian reformer. Towns and communities which, a few years ago, preferred to urge their local needs and desires through the ballot rather than before the state legislature are showing much less zeal in the circulation of initiative and referendum petitions. The spectacular legislative duel fought in 1908 between the Oregon fishermen of the upper Columbia and those of the lower Columbia has not been duplicated in recent elections. Certain well defined classes or groups, however, continue successfully to propose legislation in their own behalf. A striking illustration is the labor interests who have consistently used the initiative and referendum petition and have secured the enactment of many progressive laws. As we have already seen friends and enemies of woman suffrage and prohibition, where their battles are not already permanently won, display an unabated zeal in the circulation of petitions. There is at least one marked example of the use of the referendum for a partisan end. In November, 1915, the alleged Republican "gerrymander" act was, largely through the efforts of the Democratic party in the State, referred to the people of Ohio and was defeated. Although the measure was perhaps open to general criticism, the contest in regard to it seems to have been staged and fought out primarily on party lines.

The system of direct legislation has acquired a certain respectability even in the minds of its critics by reason of the fact that it has persisted and spread. It is but natural, therefore, that groups in the community which a few years ago regarded the initiative and referendum with open hostility and scorn are beginning somewhat cautiously to explore and utilize its resources. Thus we have presented the somewhat anomalous picture of a group of political conservatives seeking to restrict the scope and operation of the initiative and referendum by means of the initiative petition itself. Many students of direct legislation would be glad to see an increase in the number of petition signers necessary to put a measure on the ballot, an increase in the size of the majority necessary to adopt certain kinds of proposals, or a restriction upon the re-submission of defeated measures. Half

a dozen or so such measures have been submitted under the initiative in the last few years. The voter in the direct legislation States, however, seems to regard them with the same degree of friendliness with which he would view a proposal for his own disfranchisement. On the whole it may be safely stated that there is recently noticeable a tendency on the part of an ever increasing number of groups and classes to avail themselves of whatever benefits the system of direct legislation has for them.

III

Brief comment may well be made on the type of proposal which has recently been presented to the people through the initiative and referendum petition. When the system of direct legislation was quite new in this country the measures which appeared upon the ballot, when they rose to the dignity of state-wide interest, dealt most frequently with problems essentially political. Laws and amendments of political import are still presented in considerable number. One cannot fail to be impressed, however, with the rapidity and decisiveness with which that emphasis is being shifted. The political reformer is resting from his labor and in his place stands the man who demands social and economic readjustment. Perhaps it is more accurate to say that the political reformer, having accomplished most of his ambitions, has now turned his attention to these deeper and more difficult problems of community welfare. Thus where the people were voting upon proposals for direct primaries a few years ago, today they are solving the problems of minimum wage and social insurance.

It is encouraging to note that measures of trivial importance and local concern are less and less frequently submitted to popular vote. They have become the exception rather than the rule. It looks as though the day might even now be in sight when the voters of a populous State will cease entirely to be confronted with the problem whether fish may be taken from Rogue River with a hook and line or what courses of study shall be pursued at the state normal school.

There is one respect, however, in which the character of the measures which are now being presented by the initiative and referendum petition gives less cause for rejoicing. We are in a period of administrative reorganization and adjustment. The result is that the ballot in the direct legislation States is being crowded with elaborate proposals of a highly technical character. They are not matters of slight importance or local concern. It is of great moment to the voters of any State how public service companies shall be regulated and by what process land may be condemned for public use. But to submit these matters to popular vote is to strain the interest and intelligence of the citizen and invite the most haphazard results in the way of legislation. Surely if the debate, discussion, compromise and amendment which take place in legislative chambers and committee-rooms are needed anywhere they are needed in the drafting of these elaborate measures. But there seems to be an increasing readiness on the part of state legislatures and petition circulators to refer this kind of proposal to direct vote of the people. Of course whenever these highly technical provisions are written into the state constitution a vicious circle is started since such provisions will usually demand or be thought to demand frequent readjustment and change possible only through repeated popular votes. This aspect of the problem, however, does not seem to cause serious concern in the direct legislation States, and Arizona has recently created this same vicious circle in the making of statute-law by providing through constitutional amendment that laws enacted by the initiative or referendum shall not be voted, or amended or repealed by the legislature. Thoughtful critics of direct legislation cannot but regret that a tendency so hostile to the efficient and careful enactment of law continues to prevail and increase.

We have seen that the initiative and referendum petitions are being used more frequently, by an ever widening circle of groups and classes, for purposes vitally affecting the welfare of the community and in ways which directly concern the efficiency of the state government. Direct legislation is a growing, not a diminishing phenomenon. It presents a problem ever more complex,

ever more important. The feeling that it is always open season upon every phase of the initiative and referendum is passing away. It is not unreasonable to expect that unimpassioned and critical study of the system, in the light of a constantly lengthening and broadening experience will make apparent those readjustments which may be necessary to make the initiative and referendum petition a more accurate, more reliable, more efficient governmental device.

SAFEGUARDING THE PETITION IN THE INITIATIVE AND THE REFERENDUM

F. W. COKER

Ohio State University

As Ohio's first experience with the statewide initiative and referendum drew attention of students of direct legislation from all parts of the country and led to carefully worked out legislation for safeguarding petitions, I shall confine my attention in this discussion to the operation of safeguards in that State. The initiative and referendum were established by constitutional amendment in 1912. The amendment provides that only electors of the State are entitled to sign petitions, that each person must sign for himself, and that each part petition must contain an affidavit of the canvasser, stating that each of the signatures on such part was made in the presence of the affiant, that to the best of his knowledge and belief each signature is a genuine signature of the person whose name it purports to be, that he believes the persons who have signed it to be electors, and that they signed the petition with knowledge of its contents. The legislature in its first session following the adoption of the amendment passed a law prohibiting the giving or receiving of money for signing petitions, and requiring the circulators of petitions to file with the secretary of state, after election, a detailed statement of receipts and expenditures, with names and addresses of contributors and of persons receiving pay for circulating petitions, with amounts contributed or received by each. Neither the constitution nor the statute established further practical means to facilitate the prevention or detection of fraudulent practices in making or soliciting signatures.

The need for adequate means for safeguarding petitions was clearly demonstrated in the State's first experience with the referendum in 1913. In that year petitions were circulated for

the initiation of one constitutional amendment and of one law, and for a referendum upon three of the acts passed by the legislature of 1913. Two of these acts were among the most important achievements of the extensive program of social and administrative legislation enacted by the Democratic legislature of 1913, under the guidance of Governor Cox. These two acts were, first, an act establishing compulsory workmen's compensation through a system of state insurance, and, second, an act substituting centrally appointed for locally elected tax assessors. The time limits of this discussion make it impossible to review the political and legal questions involved in connection with the hearing upon the sufficiency of the petitions submitted against these laws. The hearing was held by the secretary of state under the direction of the governor. The chief agency in the circulation of petitions was the Ohio Equity Association, an organization representing certain industrial insurance companies and formed for the purpose of securing the reference and defeat of the laws mentioned above. The association was accused by the governor of being directly concerned in the fraudulent and reckless practices pursued by the actual circulators of petitions. On the other hand, the governor and secretary of state were accused of using the powers of their offices to forestall arbitrarily at any cost the referendum. The governor's motive was considered to be determined by his fear of the test of a popular referendum upon the acts, and in his desire to secure at all costs the power that would result from the extensive patronage conferred upon him by the tax-assessor law.

The hearing disclosed that in circulating petitions for the referendum on the three acts, practically every constitutional and statutory requirement affecting petitions was deliberately and repeatedly violated or ignored. Men of low character and intellect, including some loafers and ex-convicts, were employed as solicitors and were enjoined to secure names upon the petitions in any way they could. Many signatures were obtained from persons known to the solicitors not to be electors; many signatures were known to the solicitors not to be genuine signatures of persons whose names they purported to be; long lists of names

were written in by circulators, copying from city and telephone directories, hotel registers, poll lists, street signs; there thus appeared upon some petitions the names of non-residents, dead men, and inmates of the penitentiary; some circulators testified that they made up lists "out of their heads." One solicitor testified that out of 7020 names secured by him not one was genuine. Some petitions were left in saloons to be signed indiscriminately; a drink or the price of a drink was sometimes given by a circulator in order to obtain a signature; some solicitors obtained signatures by misrepresenting the contents of the petition, by stating, for example, that it was a petition for the benefit of working men or to secure increased pensions. Other abuses were disclosed in connection with the attestations by notaries public to the affidavits required to be made by the solicitor and attached to each part petition. It was established that some notaries neglected to swear the solicitors or would swear them by proxy; others would swear the solicitors when they, the notaries, had good reason to believe that names on the petitions were forgeries. It is not necessary to assume that the officers of the Ohio Equity Association were themselves positively responsible for methods pursued by circulators employed by agents of the association.

In the investigation the attorney general ruled that where evidence proved that a solicitor had wilfully sworn to a false affidavit as to the genuineness of any signature on a part petition, or that the affidavit was not in fact sworn to as required by law, all of the signatures on such part petition should be thrown out, as the false affidavit or the illegal swearing or failure to swear made the whole petition a nullity. As a result of the secretary of state's decisions in the hearing the number of signatures adjudged by him to be valid was far short of the constitutional requirement. The secretary of the Ohio Equity Association applied to the supreme court for a mandamus to be directed against the secretary of state to compel him to place the laws upon the ballots. The court refused to issue the writ, upholding the attorney general's ruling that the secretary of state, as state supervisor of elections, has authority to hear and

determine the sufficiency and validity of petitions filed with him, and that his decision thereon is final, unless such decision has been fraudulently or corruptly made, or unless he has been guilty of an abuse of discretion; and sustaining also the attorney general's ruling that a false affidavit or an imperfect swearing by the notary invalidated all signatures upon the part petition in question. This decision was rendered by a vote of five to one, the one dissenting judge being the sole Republican judge on the supreme bench.

In preparation for the special legislative session of 1914, attention of the governor, secretary of state, and the legislative reference bureau, was directed to the problem of securing a law which would provide the necessary safeguards for preventing a repetition of the frauds that appeared in 1913. Suggestions from advocates of direct legislation in all parts of the country were secured. After careful consideration of their suggestions a law was framed and passed incorporating certain of their recommendations. The new features in this law relate chiefly to the form and arrangement of the petition blanks, to provision for local examination of the signatures, to the requirement that the statement of receipts and expenditures by circulators of petitions be filed before elections instead of after elections—as provided in the law of 1913; and to the extension of penalties, by providing penalties for practices not previously punishable at law, and by increasing penalties for acts already punishable. The law provides that the general form and arrangement of petitions shall be regulated by the secretary of state, but must conform to the following requirements: (1) At the top of each part of the petition the following words shall be printed in red: "NOTICE:—Whoever knowingly signs this petition more than once, signs a name other than his own or signs when not a legal voter, is liable to prosecution;" (2) following this notice may appear a synopsis of the contents of the law or amendment, certified to by the attorney general as a truthful statement of the contents; (3) following the signatures there must appear a statement by the solicitor of whatever of value he has received or expects to receive in consideration for his services in soliciting signatures;

(4) at the end of each part petition the text of the law is printed in full. The warning in red at the top of petition is expected to put the solicitor or prospective signer on guard against reckless conduct in soliciting or giving signatures. To establish a preliminary local examination it is provided that each part petition shall contain names from only one county, that such parts shall be transmitted by the secretary of state to the respective county boards of elections to be kept on file with them and open for public inspection for a period of not over fifteen days; the local boards are required to make general scrutiny for illegal signatures or for omissions of any of the requirements of law respecting petitions; they were required to report their findings to the secretary of state who was required to give judicial notice of any hearings he might hold and was given power to subpoena witnesses, compel testimony and administer oaths. Various acts have been made corrupt practices—such as the willful misrepresentation of the contents of a petition, payments of money or assistance in securing appointment to office given to any one for signing the petition, failure to file truthful statements, as required by law. Other acts have been made punishable, such as signing a petition more than once, signing when not a legal voter, signing a name other than one's own.

There were no significant revelations or charges of fraud in connection with the initiative petitions of 1914. The Republican legislature of 1915 however has modified the law safeguarding petitions in one important particular. Under this law final power is given to local tribunals in decision upon the validity and sufficiency of petitions, such power being withdrawn from the secretary of state. This law provides that if a county board of elections find any signature insufficient it shall, after notifying persons concerned in the solicitation of said signatures, proceed to establish the insufficiency of such petitions before the court of common pleas of such county, which action shall be heard forthwith by the court, whose decision shall be final. The county board shall then return the petition to the secretary of state, with a certification of the total number of sufficient signatures thereon. The number so certified shall be used by the secretary of state

in determining the total number of signatures, which he shall record and announce. The signatures as certified by the county boards are made in all respects sufficient.

Again in 1915, in connection with the petitions for two referred laws and four initiated constitutional amendments, there appears to have been no serious suspicion of fraud. Perhaps the chief explanation for the purity of the petitions in the last two years is to be found in the watchfulness produced by the notoriety of the hearings of 1913. But legal safeguards of the laws of 1914 and 1915 doubtless contributed in important ways to the clear record for the petitions of these years. In the writer's opinion the most beneficial of these safeguards are the following: first, the provision for local examination and, under the 1915 law, local determination of the genuineness of signatures and of general compliance with the law; second, the provision for a certified synopsis of the contents of the law to be printed on each part petition, and for the warning in red at the top; third, the requirement that the statement of receipts and expenditures by the circulators be filed and opened to public inspection before election.

Time will not permit any discussion of the operation of these requirements. In conclusion, there appears at present to be no strong feeling of need for further regulation. In particular there seems to be no general demand that payment to circulators of petitions be prohibited, or that petitions be deposited for signatures in central places and the circulation of petitions be prohibited.

LEGISLATIVE NOTES AND REVIEWS

JOHN A. LAPP

Director Indiana Bureau of Legislative Information

Legislative Investigations. The number of legislative investigations authorized by the general assemblies of 1914 and 1915 was extensive. In addition to the summarized list given in the REVIEW for November, 1915, the following investigations, undertaken to obtain information on which to base prospective legislation, were authorized.

Alabama. A joint committee consisting of five members of the house and three members of the senate was authorized to sit during the recess of the general assembly to investigate every state department, board, bureau and commission to ascertain the character and purpose of all disbursements; the amount of all annually accruing interest on the bonded, floating or other indebtedness; "any abuse, waste, or improper use of public funds or property;" and the method of supplying adopted school textbooks, including the contracts of the state textbook commission and desirable methods of securing "more efficient and economical methods of procuring a uniform system of textbooks for use in the schools."¹ A commission on adult illiteracy consisting of five persons, one of whom is the superintendent of public instruction, was created to ascertain the true conditions of the State in regard to its adult illiteracy.² A second commission consisting of the governor, the chief justice of the supreme court, the presiding judge of the court of appeals, the attorney-general and the director of the department of archives and history was created to investigate the subjects of workmen's compensation, registration and insurance of land titles, penitentiary and criminal administration, conservation of the natural resources of the State and such other subjects as the commission may consider worthy of investigation.³

Arizona. Arizona authorized the commissioner of the state land department to conduct investigations on the state lands to determine their availability for agricultural purposes, grazing and development of

¹ Session Laws, 1915, 207.

³ Session Laws, 1915, 944.

² Session Laws, 1915, 80.

water power,⁴ and appropriated \$4000 to pay for the underflow water investigations previously authorized.⁵

Arkansas. Arkansas created eleven legislative committees, consisting of a designated number of senators and representatives, appointed by the presiding officers of the respective houses, to investigate the financial and administrative affairs of the state university,⁶ the state normal school,⁷ the branch normal at Pine Bluff,⁸ the tuberculosis sanatorium,⁹ the four agricultural schools,¹⁰ all state departments and institutions,¹¹ the governor's proposed revenue plan,¹² and the state hospital for nervous diseases including the actions of the state board of charities.¹³ A commission for the feeble-minded was created to investigate the conditions and needs of the feeble-minded.¹⁴ To insure publicity of these investigations, it is provided that the report of the committee to investigate the state departments and institutions shall be sent to each newspaper in the State for publication.¹⁵

California. California created a commission to investigate the various systems of social insurance in operation,¹⁶ authorized the printing of 5000 copies of the report of the recreational inquiry committee¹⁷ and provided for the investigation of the question of free textbooks in the secondary schools.¹⁸

Colorado. Colorado provided for a special committee on the public welfare, consisting of two hold-over senators and three representatives to investigate the undue influence of public officials in the enactment of laws and ordinances. Two other legislative committees were provided for: one to inspect the educational, penal, reformatory and charitable institutions of the State to ascertain their financial needs and the other to study all state institutions, boards and commissions and report.¹⁹

Delaware. Delaware provided for a committee of senators and representatives to audit the accounts of all state offices and departments and report the condition of the financial affairs of the State to the general assembly of 1917, and a second committee was provided for to investigate the action of the child labor commission.²⁰

⁴ Second Special Session, 1915, 44.

⁵ Laws, 1st Special Session, 1915, 38.

⁶ Laws, 1915, 1494.

⁷ Laws, 1915, 1494.

⁸ Laws, 1915, 1495.

⁹ Laws, 1915, 1495.

¹⁰ Laws, 1915, 1496, 1485.

¹¹ Laws, 1915, 1483, 1487.

¹² Laws, 1915, 1484.

¹³ Laws, 1915, 1484, 1489.

¹⁴ Laws, 1915, 1500.

¹⁵ Laws, 1915, 1499.

¹⁶ Laws, 1915, 473.

¹⁷ Laws, 1915, 1801.

¹⁸ Laws, 1915, 1916.

¹⁹ Laws, 1915, 598, 609, 459.

²⁰ Laws, 1915, 707, 717.

Florida. Florida provided for the appointment of a legislative committee to investigate all state farms and hospitals. Two special commissions were provided for: one to investigate the question of mothers' pensions, and a second to investigate the needs of the institutions for the care of the indigent, epileptic and feeble-minded.²¹

Georgia. Georgia appointed a committee of nine representatives and three senators to investigate the state school for the deaf and report their findings to the next general assembly.²²

Illinois. In Illinois a mine investigating commission was continued, consisting of three coal mine operators, three coal miners and three other persons to recommend changes in the mining laws.²³

Kansas. In Kansas, the attorney-general was authorized to investigate the bridge companies of the State to determine whether they are violating the anti-trust laws by dividing up the territory and to ascertain whether the several boards of county commissioners are expending the bridge funds legitimately. A legislative committee was also appointed to investigate the business management of the state offices and institutions, including the number and duties of employees and the efficiency and economy of operation.²⁴

Maine. Maine provided for the appointment of a commission of three practical men to investigate the question of the destruction of dog fish and other members of the shark family and report a plan to the next legislature.²⁵

Maryland. Maryland provided for the creation of a commission to effect a survey of all public schools, normal schools, elementary and secondary schools, academies, colleges, agricultural and professional schools receiving state aid.²⁶ A commission was created to investigate and report plans and measures for the protection of the lives and health of miners; a commission to confer with a like commission of Virginia to formulate and report a bill to regulate the fishing industries along the boundaries of the two States; and a third commission to report on the development of the resources of southern Maryland.²⁷

Massachusetts. Massachusetts created a commission consisting of the attorney-general, the board of gas and electric light commissioners, the public light commissioners and the public service commission to investigate the feasibility of placing the business of supplying ice under

²¹ Laws, 1915, 501, 250, 263.

²² Laws, 1915, 999.

²³ Laws, 1915, 80.

²⁴ Laws, 1915, 486, 497.

²⁵ Laws, 1915, 263.

²⁶ Laws, 1914, 1650.

²⁷ Laws, 1914, 742, 1761, 1751.

state supervision and control and to permit electric light and power companies to engage in the business of manufacturing and selling ice.²⁸ The board of commissioners of fisheries and game was directed to continue the investigation of the fish and fisheries of Buzzards Bay as provided in 1913.²⁹ The commission for the blind was authorized to expend \$1500 in the study of problems of defective eyesight and of doing the work of vocational guidance in certain cases.³⁰ The board of education was directed to investigate the existing method in the State of distributing the cost of public education between municipalities and the commonwealth and to devise a plan for the more equitable distribution of the school fund to towns having an assessed valuation of less than \$2,500,000 and to submit recommendations relative to taxation for the support of common schools.³¹ The board of education was likewise directed to prepare and report to the general court of 1915 a bill embodying a plan for the establishment of a state university to provide free books and instruction to regularly enrolled personal attendants, correspondence work for absentee students and plans for the support of resident students.³² The board of elevator regulations, previously created, was given additional time to perfect and submit its report.³³ The metropolitan water and sewerage board and the state board of health, acting jointly, were authorized to investigate the expediency and estimate the cost of extending certain sewerage districts and purchasing certain trunk line sewers already constructed.³⁴ The time for the reports of the commission to investigate the taxation of wild and forest lands,³⁵ the commission to investigate the subject of drunkenness,³⁶ the commission on immigration,³⁷ the commission on the white slave traffic,³⁸ the commission to devise a just and comprehensive system of state, county and municipal pensions,³⁹ the commission on street railway service furnished in the metropolitan district,⁴⁰ the board of elevator regulations,⁴¹ the state board of health on the disposition of sewage in the south metropolitan sewerage district⁴² and the commission on the regulations in force relative to the construction, alteration and maintenance of buildings⁴³ was extended. The metropoli-

²⁸ Laws, 1914, 1044.

²⁹ Laws, 1914, 1001.

³⁰ Laws, 1914, 1023.

³¹ Laws, 1914, 1045.

³² Laws, 1914, 1032.

³³ Laws, 1914, 991.

³⁴ Laws, 1914, 1036.

³⁵ Laws, 1914, 989.

³⁶ Laws, 1914, 989.

³⁷ Laws, 1914, 989.

³⁸ Laws, 1914, 990.

³⁹ Laws, 1914, 990.

⁴⁰ Laws, 1914, 991, 1000.

⁴¹ Laws, 1914, 991.

⁴² Laws, 1914, 991.

⁴³ Laws, 1914, 993.

tan park commission was authorized to investigate the question of constructing certain boulevards in the State,⁴⁴ and the cost of acquiring certain lands for park purposes⁴⁵ and of improving certain property of the State.⁴⁶ The state board of health and the municipal council of the city of Lynn, acting jointly, were authorized to report a plan for the disposal of sewage in the city of Lynn.⁴⁷ A commission was created, consisting of the chairman of the gas and electric light commission, the chairman of the public service commission, the tax commissioner and the attorney-general to consider the question of the taxation of signs and other devices used for commercial advertising and report the draft of a bill.⁴⁸ The board of harbor and land commissioners was authorized to investigate the question of conserving, utilizing and equalizing the flow of waters in the streams of the State,⁴⁹ and to estimate the cost of improving certain harbors and rivers of the State.⁵⁰

A commission consisting of the tax commissioner, the attorney-general and the chairman of the homestead commission was directed to prepare and report bills embodying uniform methods of procedure in taking land for public purposes,⁵¹ and this commission was continued in 1915.⁵² The governor, with the advice and consent of the senate, was authorized to appoint a special commission, one member of which must be a judge of the land court, to consider and recommend changes in the laws relating to liens for labor performed and materials furnished upon real estate and to mortgages to secure loans for the construction of buildings and other mortgages for the purpose of establishing the relative priority of loans and mortgages.⁵³ The governor, with the advice and consent of the senate, was authorized to appoint a commission of five citizens to investigate the needs, possibilities and probable benefits to the State, and especially the five western counties, of the development and extension of transportation facilities and the utilization of the agricultural, dairy and stock raising opportunities of those counties and to study the causes and remedies of the diminution of the population and the decline of industries and agriculture.⁵⁴ The governor, with the advice and consent of the senate, was authorized to appoint a commission, one of whom is the insurance commissioner, to

⁴⁴ Laws, 1914, 994.

⁴⁵ Laws, 1914, 995.

⁴⁶ Laws, 1914, 1001.

⁴⁷ Laws, 1914, 1007.

⁴⁸ Laws, 1914, 1028.

⁴⁹ Laws, 1914, 1029.

⁵⁰ Laws, 1914, 1035.

⁵¹ Laws, 1914, 1031.

⁵² Laws, 1915, 333.

⁵³ Laws, 1915, 1038.

⁵⁴ Laws, 1914, 1047.

investigate the practices of insurance companies and their rates in workmen's and other insurance and determine whether a monopoly exists in the insurance business.⁵⁵ The state highway commission, the county commissioners of Barnstable county and the county commissioners of Plymouth county, acting jointly, were required to investigate the practicability and cost of constructing a designated highway bridge.⁵⁶ The public service commission was authorized to investigate and report on the relation of the railroads to the statute laws of the State.⁵⁷ It also was directed to report the amount of capital invested in street railways, the cost of acquiring such lines by eminent domain or otherwise and in the event they should be acquired what part of the cost should be assessed upon the real estate to be benefited,⁵⁸ and it was authorized to study existing laws relative to the repair and maintenance of bridges,⁵⁹ and to investigate the operation of certain elevated and surface cars and the issuance of free transfer tickets.⁶⁰ The state forest commission was authorized to investigate the advisability of establishing certain state park and forest reservations.⁶¹ The metropolitan park commission and the highway commission were empowered to conduct investigations relative to state highways and parkways.⁶²

The economy and efficiency commission was authorized to investigate and report on the readjustment of the finances of the commonwealth by the retirement of the sinking fund bonds and the issuance of serial bonds.⁶³ The commission on economy and efficiency was empowered to investigate the standardization of grades and compensation in the civil engineering service of the commonwealth.⁶⁴ A committee of two senators and four representatives was appointed to investigate the necessary changes in the tax laws.⁶⁵ A terminal commission was appointed to investigate the question of terminal facilities and consider the improvement of facilities for transportation of freight in the metropolitan district.⁶⁶

Mississippi. Mississippi created a committee of two senators and three representatives to investigate all state officers and institutions except the penitentiaries.⁶⁷

⁵⁵ Laws, 1914, 1053.

⁵⁶ Laws, 1914, 1026.

⁵⁷ Laws, 1914, 1052.

⁵⁸ Laws, 1914, 1031.

⁵⁹ Laws, 1915, 305.

⁶⁰ Laws, 1915, 320.

⁶¹ Laws, 1915, 307, 328, 338.

⁶² Laws, 1915, 321, 329, 330.

⁶³ Laws, 1914, 1052.

⁶⁴ Laws, 1915, 345.

⁶⁵ Laws, 1915, 346.

⁶⁶ Laws, 1915, 351.

⁶⁷ Laws, 1914, 567.

Montana. Montana provided for a committee of two Republican and two Democratic representatives and two Republican and two Democratic senators to investigate the various initiative measures already adopted and enacted into law and prepare bills for their proper amendment.⁶⁸

Nebraska. The governor of Nebraska is authorized to appoint a commission of three persons to act with a like commission of Iowa to determine certain disputed boundary questions.⁶⁹

Nevada. Nevada provided for the creation of a commission to investigate the question of having school books for the primary and grammar grades printed and produced by the state printing office.⁷⁰ The governor is authorized to appoint an educational survey commission of ten persons, including the state board of education to ascertain the efficiency of the educational agencies of the State.⁷¹

New Hampshire. The tax commissioners of New Hampshire are authorized to make a special investigation of the indebtedness of the towns, cities and counties of the State, including loans made in anticipation of taxes, the amount and character of the indebtedness incurred within and without the debt limit, the amount of the debt outstanding against which no sinking funds are being accumulated, the disposition made by cities and towns of the funds left them in trust and the kind and character of the records kept.⁷² The governor is authorized to enter into an agreement with the United States geological survey for the purpose of determining the amount of water power available in the streams of the State and the best means of utilizing the same.⁷³

New Jersey. In New Jersey the joint appropriation committee of the legislature was empowered to investigate the financial needs of the department of education, public roads, the institutions under control of the department of charities and corrections and the other departments and commissions.⁷⁴ The commission on the care of mental defectives was reestablished and authorized to continue its investigations of the proper administration of the charities and corrections of the State and the care of dependents, defectives and delinquents.⁷⁵ A committee consisting of the medical directors and the wardens of the two state hospitals for the insane, the county physician of Hudson county or his assistant, the county counsel of Essex county or his

⁶⁸ Laws, 1915, 469.

⁶⁹ Laws, 1915, 654.

⁷⁰ Laws, 1915, 522.

⁷¹ Laws, 1915, 371.

⁷² Laws, 1915, 266.

⁷³ Laws, 1915, 91.

⁷⁴ Laws, 1914, 639.

⁷⁵ Laws, 1915, 881.

assistant, the warden and medical superintendent of the Essex county hospital and the medical directors of the county hospitals of Atlantic and Camden counties and one assistant from the office of the attorney-general, was provided for to draft laws for the better management and care of insane hospitals and the commitment thereto and the care therein of insane persons.⁷⁶

New Mexico. In New Mexico a committee consisting of three representatives and two senators was appointed to investigate the management and financial status of the college of agriculture and mechanic arts.⁷⁷

New York. By appropriations New York provided for investigations by existing boards and commissions of the conditions of grape growing, including cultivation, methods of management and insect pests;⁷⁸ hop production and diseases;⁷⁹ field, orchard and truck garden crops and the means of producing sanitary milk;⁸⁰ bovine tuberculosis;⁸¹ grape culture and insect pests;⁸² soils and plant nutrition;⁸³ and hydrographic investigations.⁸⁴ The commission created in 1911 to investigate manufacturing conditions in cities of the first and second classes was continued and authorized to proceed with its work.⁸⁵ A commission of five members was authorized to investigate the subject of the care, custody, treatment and training of the mentally deficient including epileptics.⁸⁶

North Carolina. The governor of North Carolina is authorized to appoint a commission of five citizens, one a member of the supreme court, one a superior court judge, two active practitioners and one layman to revise and simplify the present system of legal procedure and to formulate a uniform system of inferior courts.⁸⁷

North Dakota. In North Dakota a joint legislative committee was appointed to investigate the financial affairs of the board of control⁸⁸ and a similar committee to inspect the affairs of the examiner's department.⁸⁹

Ohio. In Ohio, a legislative committee, with the assistance of the attorney-general, is authorized to investigate the bank department and

⁷⁶ Laws, 1915, 882.

⁷⁷ Laws, 1915, 20.

⁷⁸ Laws, 1915, 2465.

⁷⁹ Laws, 1915, 2652.

⁸⁰ Laws, 1915, 2465, 2220.

⁸¹ Laws, 1915, 2327.

⁸² Laws, 1915, 2220.

⁸³ Laws, 1915, 2219.

⁸⁴ Laws, 1915, 2269.

⁸⁵ Laws, 1914, 373.

⁸⁶ Laws, 1915, 772.

⁸⁷ Laws, 1915, 480.

⁸⁸ Laws, 1915, 102.

⁸⁹ Laws, 1915, 97.

recommend the enactment of such measures as will insure better protection to creditors and owners of banks which are closed by the department.⁹⁰ Two other legislative committees were created, one to investigate the several departments of the State and ascertain what positions can be abolished and what salaries reduced without impairing the efficiency of the public service,⁹¹ and the other to investigate the proper housing of state offices, bureaus and departments.⁹² The governor is authorized to appoint a commission consisting of the adjutant-general, the superintendent of public instruction and the commandant of the military department of the state university to investigate and report a policy and plan for the organized instruction of the students in the schools and colleges of the State in the use of modern arms and the rudiments of drill and maneuvers and the maintenance and sanitation of camps;⁹³ and a second commission on rural credits and coöperation to investigate the existing laws of Ohio on those subjects and submit recommendations.⁹⁴

Oregon. In Oregon a legislative committee was provided for to prepare bills for the abolition and consolidation of state boards, commissions and officers in the interest of efficiency and economy;⁹⁵ a second committee to investigate the production of flax and flax fiber and the feasibility of installing flax manufacturing machinery at the state penitentiary;⁹⁶ a third committee, to act with a similar committee from Washington, to confer on the subject of legislation affecting the fishing industry of the Columbia river;⁹⁷ and a fourth committee to investigate the actual financial needs and requirements of higher education in the State.⁹⁸ Two special commissions were created: one to examine the laws of Oregon relative to timber and forestry and recommend such changes as will foster the timber industry;⁹⁹ and a second which, with the assistance of the superintendent of banks, is required to investigate the trust company business and its regulations.¹⁰⁰

Pennsylvania. In Pennsylvania, three citizens of Philadelphia, to be selected by the governor, are required to consider the feasibility of establishing an administrative building in the city of Philadelphia to house certain branches of the state government.¹⁰¹ The governor is

⁹⁰ Laws, 1915, 847.

⁹¹ Laws, 1915, 852.

⁹² Laws, 1915, 861.

⁹³ Laws, 1915, 861.

⁹⁴ Laws, 1915, 870.

⁹⁵ Laws, 1915, 605.

⁹⁶ Laws, 1915, 607.

⁹⁷ Laws, 1915, 621.

⁹⁸ Laws, 1915, 623.

⁹⁹ Laws, 1915, 613.

¹⁰⁰ Laws, 1915, 615.

¹⁰¹ Laws, 1915, 1098.

authorized to appoint a commission to investigate the practicability of establishing a plant at the new state penitentiary for the manufacture of brick to be used on state highways.¹⁰² A committee consisting of the chairmen of the appropriation committees of the house and senate and five additional members from each appropriation committee was authorized to investigate the charges which had been preferred against the administration of all state-aided institutions.¹⁰³

Porto Rico. Porto Rico continued the economy commission created in 1914 and provided that no new office shall be created or changes made in the compensation of public officials without its approval.¹⁰⁴ A commission was created to investigate the question of publishing the works of Eugenio Maria de Hostos.¹⁰⁵

Rhode Island. In Rhode Island, the members of the state house commission, the president of the metropolitan park commission, the mayor and president of the common council of the city of Providence and the chairman of the city planning commission were created a special commission to investigate the question of the treatment of the large, open and barren areas of land in the city of Providence.¹⁰⁶

South Dakota. In South Dakota the state engineer was instructed to investigate the subject of the use and control of all publicly and privately owned artesian wells, showing the owner, date of construction, size, flowage, purpose for which used, etc.¹⁰⁷

Tennessee. Tennessee provided for the appointment of legislative committees to investigate the results achieved by the operation of fire marshal departments, out of which grew the passage of a law;¹⁰⁸ fire insurance rates;¹⁰⁹ the practicability of purchasing a governor's home;¹¹⁰ and the department of workshops and factory inspection.¹¹¹ A similar legislative committee is authorized to employ competent scientists to ascertain whether tuberculosis germs exist in the state penitentiary.¹¹² A committee, consisting of the chairmen of the ways and means committee of the house and the finance committee of the senate, is authorized to appoint a sub-committee of five persons to investigate the financial conditions of the various departments of state.¹¹³ The governor is empowered to appoint a commission to investigate and report

¹⁰² Laws, 1915, 1099.

¹⁰³ Laws, 1915, 1061.

¹⁰⁴ Laws, 1915, 102.

¹⁰⁵ Laws, 1915, 112.

¹⁰⁶ Laws, 1916, 132.

¹⁰⁷ Laws, 1915, 62.

¹⁰⁸ Laws, 1915, 561, 613.

¹⁰⁹ Laws, 1915, 628.

¹¹⁰ Laws, 1915, 639.

¹¹¹ Laws, 1915, 641.

¹¹² Laws, 1915, 635.

¹¹³ Laws, 1915, 637.

on the practicability of establishing a free textbook system under the direction of the department of education.¹¹⁴ A committee of three, one a representative of capital, one a representative of labor and one a representative of the public, was created to investigate the effect of convict made goods when brought into competition with goods produced by free labor.¹¹⁵ The governor, the comptroller, the treasurer, the secretary of state and the chairman of the state board of control were authorized to investigate the advisability of the State's purchasing or installing a printing plant to do the printing and binding for the State.¹¹⁶ The joint legislative educational committee, which was formerly appointed, was authorized to continue its investigation of educational matters.¹¹⁷

Texas. Texas created a commission consisting of three senators, three representatives, the state health officer and the state dairy and food commissioner to investigate and recommend certain sanitary changes.¹¹⁸

Vermont. In Vermont the senate and house committees on the insane were authorized to visit the insane hospital and investigate its management.¹¹⁹ The senate and house prison committees were authorized to visit the state prison and conduct investigations, and submit reports.¹²⁰ A joint special committee of three senators and three representatives was appointed to consider the question of exemptions from taxation and the abolition of deductions from debts owing.¹²¹ A commission was created to consider and report more expeditious methods of administering justice.¹²²

Virginia. Virginia authorized the appointment of a joint committee of four representatives, three senators and three other persons appointed by the governor to consider the whole question of taxation. The state board of charities and corrections was authorized to continue its investigations of the feeble-minded, segregation and the prevention of procreation, and report to the next general assembly.¹²³

Wisconsin. Wisconsin provided for the appointment of a committee of two senators and three representatives to investigate the question of the purchases, sales, options and contracts for university lands.

¹¹⁴ Laws, 1915, 607.

¹¹⁵ Laws, 1915, 610.

¹¹⁶ Laws, 1915, 645.

¹¹⁷ Laws, 1915, 655, 659.

¹¹⁸ Laws, 1915, 274.

¹¹⁹ Laws, 1915, 534.

¹²⁰ Laws, 1915, 534.

¹²¹ Laws, 1915, 535.

¹²² Laws, 1915, 537.

¹²³ Laws, 1914, 377, 242.

The conservation commission was directed to investigate the whole question of fish, game and wild life.¹²⁴

Wyoming. Wyoming provided for the appointment of a legislative committee to investigate the water rights enjoyed by certain settlers.¹²⁵

CHARLES KETTLEBOROUGH

Indiana Bureau of Legislative Information.

New Administrative Agencies. The number of administrative agencies of state government created by legislation seems to have reached its high tide in 1913, for the legislation of 1915 shows but about one hundred and seventy new agencies created as against two hundred and thirty-six in 1913. The number discontinued falls from seventy-nine in 1913 to sixty-eight in 1915. In eighteen cases there occurred what might fairly be called reorganizations in 1915 as against twelve in 1913.

As was remarked in the notes on this subject for 1913,¹ the problem of what properly should be included in such an enumeration is perplexing. Inaccuracies of classification as well as sins both of omission and commission are almost certain to be made but general tendencies, at least, can be shown. An attempt has been made to apply again the rules of inclusion and exclusion set up on that occasion. Under the general head of agencies created are included besides those created outright as separate organizations, eleven cases where the exercise of a new function assumed by the State has been entrusted to an existing office, as in Michigan where the insurance commissioner is made ex officio fire marshal, and ten instances where functions formerly exercised by independent authority were combined with other existing agencies.

In some twenty-five instances new bureaus in existing departments are entrusted with new branches of administration. This practice is especially to be observed in Pennsylvania where there have been created bureaus of municipal statistics, employment and workmen's compensation in the department of labor and industry, forest protection in that of forestry, vital statistics in that of health, vocational education in that of public instruction, distribution of documents in that of public printing and public records in the state library.

The new offices are well distributed geographically through the

¹²⁴ Laws, 1915, 983, 1007.

¹²⁵ Laws, 1915, 263.

¹ See REVIEW, vol. 8, p. 431, August, 1914.

middle west, west and south, but are most numerous in California with fifteen; Pennsylvania with fifteen; Alabama with ten, and North Dakota and Tennessee with eight each. Five States holding legislative sessions seem not to have added to their administrative machinery during the year. They are Georgia, Idaho, Massachusetts, Nevada, and South Dakota.

Of one hundred and fifty which are new and independent authorities, about forty are filled *ex officio*. A dozen more are partly *ex officio* and partly appointive.

The remaining hundred are filled by appointment, save the one case of dairy and food commissioner in Oregon who is elected by the people. Of the *ex officio* and mixed authorities most are boards, consisting of higher state officers occasionally with provision for professional representation thereon, as in the case of the highway commission of Tennessee made up of the governor, state geologist, dean of engineering of the state university and three appointed by the governor. In some cases the technical knowledge is supplied by a permanent secretary. Boards of examination and registration in professions are made up of professional practitioners in nearly all cases.

In the presence of the numerous reports of efficiency and economy commissions made recently, the trend in matters of organization is the more interesting. While there are some notable instances where a logical reorganization and centralization has been accomplished, in other cases, even in the same States, have new authorities been created to care for activities which might well have been given over to existing departments. Precedent, prejudice and politics have been the motive forces rather than efficiency and economy. Here and there, however, substantial results have been attained. As has been noted elsewhere a large majority of the discontinuance of officers are due to consolidations and a substantial number of new creations are but bureaus in larger departments. One notable instance is in Wisconsin where the agencies of forestry, fish, game, parks and fire protection are united under a conservation commission, and where six agencies including the old board of agriculture, and those relating to veterinary medicine, orchard and nursery inspection and immigration were merged in a department of agriculture headed by a single commissioner. In North Dakota, no less than eight boards of trustees of educational institutions have been merged in a board of regents. A reorganized department of agriculture in Pennsylvania absorbed the work of four analogous offices. New Jersey consolidated four offices into a department of

commerce and navigation, four into a department of shell fisheries, and two into a board of taxes and assessments. Tennessee and Colorado substituted central boards of control for separate boards of trustees for charitable and correctional institutions.

While not of great importance, it is significant to observe a tendency to employ the words "department" and "bureau" in the sense employed in the national administration, as well as a tendency to clearer thinking in distinguishing the department or bureau from the officer at its head, as the "department of fire protection" instead of the "fire marshal's department" and likewise the "department of agriculture" rather than the "board of agriculture" when referring to the office and not to the incumbents.

In the group of changes which may perhaps be best treated as reorganizations there is a marked tendency away from the board to the single head for a department. This is observed in the departments of labor in Connecticut, of irrigation and of grain inspection in Kansas, of fish and game in Minnesota, of conservation in New York and Wisconsin, of health in West Virginia and in Utah and of agriculture in Ohio. In New York, on the other hand, and in Indiana, the bureau of inspection has been succeeded by an industrial board.

In Wisconsin the examination and licensing of doctors, surgeons, nurses, midwives, osteopaths and practitioners of "all other forms of medicine or healing" have been gathered under the board of medical examination. In Alabama the railroad commission is given power over other public utilities and becomes the public service commission. In Arizona an appointive land board gives way to an ex officio board with a land commissioner as executive officer. Tennessee places beside its superintendent of education a board of education. The reorganization of the labor department in New York substitutes for the commissioner of labor an industrial board which takes over the work of the workmen's compensation board.

A limitation of the tendency of state activities to expand seems to be evidenced in the discontinuance of no less than sixty-eight offices during the year. This limitation is, however, more apparent than real, since of these only twelve indicate a real discontinuance of the function, the others resulting only in a transference of the duties to some new authority or a consolidation with some existing institution. Tax commissions were abolished outright, as was the department for the supervision of officers and accounts in Oregon. Oregon also abolished the office of immigration agent, the board for the licensing of anes-

thetists, the state biologist and the Portage railway commission. The board of dentistry in Florida, the economy and efficiency department and the office of fire marshal in New York, and the bureau of cotton statistics in Alabama shared the same fate:

The steps taken toward centralization through consolidation in Wisconsin, North Dakota, Pennsylvania, New Jersey, Colorado and Tennessee and the reorganization of the labor department in New York account for most of the departments extinguished by transfer. The merging of the work of the land agent with that of the auditor, of the immigration commissioner with that of the commissioner of agriculture, and of the oyster commission with that of the secretary of state in Alabama; and the consolidation of the building and loan department with that of the auditor in Connecticut are examples of the remaining consolidations. In New Hampshire the work of the state engineer is transferred to the highway engineer while in Oregon the reverse is true.

A general survey of the field shows that not only is the number of new administrative creations less than in 1913 but that of those created fewer are of first rate importance. The creation of public service commissions, departments of labor, and boards of charities and corrections has given place to boards of professional examination and the creation of minor authorities covering a very wide range. In the direction of reorganization and consolidation, though the larger plans of the efficiency and economy commissions have in no case been adopted, yet their influence has been felt to some good purpose.

An analysis of the legislative creations of administrative character grouped by function shows these results:

If we group under the head of protective functions those pertaining to safety, health, morals and labor, labor leads with industrial commissions in New York and Colorado, industrial accident or workmen's compensation boards in Maine, Montana, West Virginia and Wyoming; New York also has an advisory industrial council and Pennsylvania an insurance board to manage the state insurance fund. There are also two child labor authorities (Alabama and Delaware); a commissioner of mediation and conciliation (Michigan); a board of immigration (North Dakota); employment bureaus in two States (Iowa and Pennsylvania); an industrial welfare commission (Kansas); two for mine inspection (Arizona and Tennessee); and one for boiler inspection (Connecticut). Public safety is concerned with three armory boards in New Mexico and a body of state rangers created in Tennessee.

Fire protection is provided in Michigan and Tennessee. There are also agencies for motor vehicle control in California and Minnesota. Public morals are the concern of a board of censors of moving pictures in Pennsylvania, excise commissioners in New Hampshire, and an athletic commission in Minnesota.

The public health is the object of agencies for dairy and food inspection in North Dakota and Oregon, cannery inspection in Delaware, hotel inspection in Iowa, sanitary engineering in Iowa and tuberculosis control in California and Tennessee. The boards of professional examination in the interests of health include preliminary medical examination in Tennessee, medical examination in New Hampshire, five in "chiropractic" (Arkansas, Nebraska, North Dakota, Oregon, Tennessee); pharmacy, one (Montana); chiropody, three (California, Connecticut, Michigan); nurses, five (Colorado, Maine, Nebraska, North Dakota, Ohio); optometry, three (Illinois, Minnesota, Utah); dentistry, two (Alabama, California); embalming, one (California).

The creations for administering charities and corrections include three boards of control (Colorado, Delaware and Tennessee); one reformatory board (Maine); a pardon board (California); regulation of detectives (California); lunacy commission (Oklahoma); care of the blind (Alabama); to provide work for the blind (Indiana); a Confederate pension board in Alabama and a board of parole in Rhode Island.

Educational authorities are: state board of regents (North Dakota); two commissioners of education (Delaware, North Dakota); trustees of agricultural schools (Vermont); two boards of trustees donated to colleges (Vermont); a bureau of vocational education (Pennsylvania); curators of the state library (Arizona); two historical commissions (California, Indiana); and an illiteracy commission (Alabama).

The care of economic interests gives rise to a wide range of offices. Banking is cared for by a banking board in South Dakota and a bank department in Montana—both cases evolutions from the office of public examiner; a bank examiner in New Mexico and a charter board in Indiana, Florida and Missouri have provided supervision for building and loan associations, and Michigan has a securities board to administer the "blue sky" law. Insurance departments were created in Alabama and Oklahoma. Wyoming alone created a public service commission, though Alabama gives that title to its railroad commission along with wider duties. Highway departments were created in New Hampshire, Oklahoma and Tennessee; and in North Carolina there was created both a commission and a highway commissioner. Wisconsin has provided a chief engineer for the service of all departments.

The field of agricultural interests is represented by one department of agriculture (Wisconsin); an advisory agricultural commission (Pennsylvania); one bureau to regulate commission men (Alabama); and one state commission market director to operate a state market (California); one state entomologist (Wisconsin); two state fair boards (Michigan, Wisconsin); one irrigation board (California); a board of forestry in Texas; a land bank board in Missouri and a department of farm loans in Montana, a plant board in Florida, and a board of control of experiment stations in Ohio.

Supervision of weights and measures is entrusted to a bureau of standards in Oklahoma and to a superintendent of weights and measures in Utah. Authority under various titles was created for the care of fish and game in Oregon, Tennessee and Washington, and for shell fish especially in New Jersey. North Carolina created the office of forester and Pennsylvania a bureau of forest protection in the department of forestry. Inspection of certain commercial articles was provided through oil inspectors in Colorado and North Dakota, a grain inspection department in Montana and an inspector of naval stores in Florida. The position of state chemist was created in Colorado. Waterborne commerce was recognized in New Jersey by the creation by consolidation of a department of commerce and navigation, and in Alabama by a board of harbor commissioners to act also as a board of pilot commissioners. Bureaus of vital statistics were organized in four states (California, Florida, Oregon and Pennsylvania) and a bureau of municipal statistics in Pennsylvania. Among the examining authorities for professions or employments other than those connected with public health are four boards of veterinarians (Arkansas, Pennsylvania, West Virginia, Wyoming); five boards of accountancy (Arkansas, Indiana, Iowa, South Carolina and Texas); four boards of architecture (Florida, Michigan, New York, North Carolina); horse-shoers and structural engineers are to be examined in Illinois.

Finance is made the concern of several new agencies including: a tax commission (South Carolina); board of taxes and assessment (New Jersey); advisory tax board (Virginia); auditing board (Iowa); traveling auditor (New Mexico); fiscal board for investment of funds (Wyoming); board of equalization (Alabama); board of finance, for budget making (Connecticut); budget committee (Vermont); court of claims (New York), and an emergency to make transfers of appropriations (North Dakota).

Last of all must be considered a miscellaneous group of authori-

ties which may be said to assist in the maintenance of the state government itself. This includes: one civil service commission (Kansas); an inspector of masonry, public buildings and works (Illinois); a state architect and a capital planning commission (California); two state purchasing boards (Alabama, California); three state printing boards (Oregon, Tennessee, Vermont); a state printer (Oregon); a superintendent of printing (Illinois); a legislative reference library (North Carolina); a division of public records (Pennsylvania); a document editor (Iowa); an office for distribution of documents (Pennsylvania); commissioners of uniform legislation (Wyoming); an executive counsel (Wisconsin); and two authorities for the supervision of liquor selling in Ohio.

FRANK G. BATES.

Indiana Bureau of Legislative Information.

Public Health Administration. A wave of constructive public health reform is sweeping over the country and we are coming to recognize that here in the United States an unnecessary sacrifice is being made to preventable disease. The cities quite generally have handled their health problems satisfactorily but the sanitary conditions in the small town and the rural communities have not been what they should be. Public health administrators recognize that the problem today is to reach the small town and the rural community and organize effective public health service.

More than half the people of this country live in the rural districts; 53.7 per cent of the total population being classed as rural according to the 1910 census. In the United States there are 2953 counties, 80 per cent of which are essentially rural in character. Up to this time with small exceptions the rural districts throughout the country have received scarcely any attention from sanitary authorities and as a result sanitary conditions have improved very little.

It has been a sort of tradition that the country or small town is healthier than the congested city but according to recognized authorities, the reverse is rapidly coming to be true. Statistics compiled by the United States census bureau show that from 1900 to 1912 the death rate in registration states decreased 21.2 per cent in the cities but only 8.6 per cent in rural districts. In New York City the death rate for a number of years has been steadily declining, while in the rural districts of the State at the same time it has slowly increased.

In practically every State the county has been the unit for public

health administration, and up to last year only seventeen of the whole number of counties had arranged for full-time health officers. North Carolina is the only state employing to any extent full-time county health officers, and eleven of the total number of seventeen such officers doing good work toward bettering public health conditions are in that State. The system of administering regulations pertaining to the health of the rural dweller in the past has proved inefficient for these reasons. No one saw the need for an efficient public health service for the rural dweller. Problems of sanitation and health have never been brought home with such force to him as they have been to the resident of a great city where if the water supply is polluted scores and hundreds of persons die in a day. Funds were lacking with which to carry on public health work. And lastly, men were employed as health officers who were untrained for the work and who received such small salaries that they were obliged to keep up some other business as the practice of medicine to the neglect of their duties as a public health officer in order to make a livelihood.

Seven States in the last few years have made an effort to better public health conditions for their rural population by providing for a division of these States into health districts with a trained health officer at a good salary devoting all his time to public health conditions in each district.

A brief review of the outstanding features of these various state laws follows:

Massachusetts was the first to adopt the plan of dividing the State into health districts. In 1907 a law¹ was passed providing for fifteen health districts with a full-time state inspector appointed by the governor with the advice and consent of the senate in each district. Later the number of health districts was reduced to fourteen and still later to twelve. Prior to the creation of the state board of labor and industries in 1912² many of the duties of that department were administered by the district inspectors. In 1914 a new law³ reorganizing the state board of health was passed. A commissioner of health was made the head of the department and with the approval of the public health council was empowered to divide the State into eight health districts and appoint a full-time health officer in each district.

The state department of health in New York State was also reorganized in 1913.⁴ The department was separated into nine divisions each

¹ Acts of 1907, Ch. 537.

³ Acts of 1914, Ch. 792. •

² Acts of 1912, Ch. 726.

⁴ Acts of 1913, Ch. 559.

managed by a director appointed by the state commissioner of health. There was also provided a public health council possessing broad legislative powers which consisted of the commissioner of health and six other members all appointed by the governor. The commissioner of health was empowered to divide the State excluding New York City into twenty or more districts and appoint a sanitary supervisor in each district. Last year owing to a lack of funds the number of sanitary supervisors was reduced to ten.

The 1913 legislature passed a law⁵ for the State of Wisconsin authorizing the state board of health to divide the State into five districts and appoint a full-time deputy state health officer in each. The Wisconsin deputy is under civil service regulation and his term of office is during efficiency and good behavior.

The state board of health of Maryland was given power⁶ by the legislature in 1914 to divide the State outside the city of Baltimore into ten districts following county boundary lines and appoint a full-time deputy state health officer in each. The duties of the deputy as defined by law follow very closely the duties prescribed by law for the Wisconsin deputy.

The Illinois economy and efficiency commission after a study of Illinois health agencies in 1914 recommended in their report that the State be divided into at least eight health districts each with its own full-time state health officer. The 1915 Illinois legislature provided indirectly through an appropriation bill⁷ for a division of the State into four health districts with a full-time medical health officer in each district. A division into five districts was made with the state epidemiologist acting for the time as district health officer in one of the smaller districts in addition to his regular duties until a more liberal appropriation is made for the work.

For health supervision the State of Florida is divided into seven districts,⁸ each under the supervision of a full-time appointee known as the assistant to the state health officer. In addition two "county agents" and four sanitary policemen look after health problems in the cities of the State, for few Florida cities have health departments of their own. Practically all public health work in Florida is done by the

⁵ Acts of 1913, Ch. 674.

⁶ Acts of 1914, Ch. 675.

⁷ General appropriation bill.

⁸ Regulation of state board of health which has full authority in all matters pertaining to public health.

State. This is the only State which finances its health work by a special tax, levying a tax of one-half of one mill on all assessable property in the State for the maintenance and support of the state board of health.

Pennsylvania is the only other State that centralizes state health work after the plan which Florida employs. Since the department of health was reorganized in 1905⁹ Pennsylvania has the most highly centralized system of health administration of any State. The commissioner of health has power to apportion the State into ten districts for the administration of sanitary affairs and to appoint a health officer in each district. All local health work in unincorporated districts as well as in many incorporated places is under direction and supervision of the central state authority. According to Dr. Chapin there are in the State 670 districts having a population of over 2,500,000 in which the health officer is appointed, directed and paid by the State. The State also appoints and pays the 68 county medical inspectors who serve as supervisors under the direction of the medical division of the state department.

A number of other States have given considerable study and attention to the problems of improving health conditions particularly in their rural sections through the services of full-time health officers, either by dividing the State into health districts or by making use of the county unit in which to provide for full-time health officers. Legislatures in Kansas, Michigan, Ohio and Vermont at their last sessions considered dividing the State into health districts, while Indiana and Kentucky at the same time proposed to put a full-time health officer in every county. No State acted favorably on any of these proposals. Other States including Alabama, Georgia, Louisiana and Minnesota have given more or less attention to this problem.

An enumeration of the duties of the full-time health officer is found in practically every state law providing for such officers. In general they are similar in all States. Following are the duties that a sanitary supervisor in New York State must perform according to the law of that State:¹⁰

1. "Keep himself informed as to the work of each local health officer within his sanitary district.
2. Aid each local health officer within his sanitary district in the performance of his duties, and particularly on the appearance of any contagious disease.

⁹ Acts of 1905, Ch. 219.

¹⁰ Acts of 1913, Ch. 559.

3. Assist each local health officer within his sanitary district in making an annual sanitary survey of the territory within his jurisdiction, and in maintaining therein a continuous sanitary supervision.

4. Call together the local health officers within his district or any portion of it from time to time for conferences.

5. Adjust questions of jurisdiction arising between local health officers within his district.

6. Study the causes of excessive mortality from any disease in any portion of his district.

7. Promote efficient registration of births and deaths.

8. Inspect from time to time all labor camps within his district and enforce the regulations of the public health council in relation thereto.

9. Inspect from time to time all Indian reservations and enforce all provisions of the sanitary code relating thereto.

10. Endeavor to enlist the coöperation of all the organizations of physicians within his district in the improvement of the public health therein.

11. Promote the information of the general public in all matters pertaining to the public health.

12. Act as the representative of the state commissioner of health, and under his direction, in securing the enforcement within his district of the provisions of the public health law and the sanitary code."

Authorities agree that the following conditions should prevail in public health administration:

1. That the district health officer be directly responsible to the state department of health and receive and enforce orders or regulations issued from that source.

2. That the public health officer must be a man trained in the science of sanitation and public health, the average physician not being qualified to undertake such work.

3. That the man wanted for the position of public health officer should be a trained man who is interested in public welfare; who will be a live executive; and who can use perspective in the direction of public health activities.

4. That such an officer should be a full-time official, giving all his time to the work of serving the public and not employed in any other business, and that an adequate salary should be paid to him so that it will not be necessary to engage in any other occupation.

ARTHUR CONNORS.

Indiana Bureau of Legislative Information.

Codification. During the legislative years 1914 and 1915, several States authorized the revision, compilation, consolidation and codification of the whole or a part of the existing statute laws.

General Codifications. Delaware completed a revised code in 1914 and the general assembly of 1915 supplied certain omissions, corrected certain clerical errors, and formally adopted the code.¹ Georgia appointed a committee of three senators and five representatives to examine the so-called Park Code and report its opinion to the next general assembly on the adoption of this code as the official code of the State.² Maryland formally legalized the general code of the State as revised and edited by George P. Bagby, appearing in three volumes.³ Maine provided for the appointment of a commission to supervise the revision of the general laws of the commonwealth.⁴

Partial codifications. The partial codifications authorized were rather numerous. One of the most comprehensive partial codifications completed in 1915 was the Michigan judiciary act which was enacted by the general assembly and consolidates all existing laws relative to the courts and legal procedure.⁵ At the same session the Michigan legislature authorized the attorney-general to prepare bills for the revision, consolidation and classification of the insurance laws;⁶ the secretary of state and the game, fish and forestry warden are authorized to revise, consolidate, compile and index all fish and game laws and report the work to the succeeding general assembly, and this work is to be done after the adjournment of each legislature;⁷ the secretary of the senate and the clerk of the house are required to revise and compile the election and registration laws and report to the next general assembly;⁸ and the secretary of state is required to compile the laws relative to township officers.⁹ The legislative reference bureau of Pennsylvania is authorized to continue the codification of certain laws which was formerly authorized and was begun in 1913.¹⁰ The legislature of Tennessee authorized the governor to appoint a committee to codify the school laws and report to the next general assembly.¹¹ Utah created an educational code commission consisting of the superintendent of public instruction, the attorney-general and three other citizens.¹² Wis-

¹ Laws, 1915, 96 and 99.

² Laws, 1915, 998.

³ Laws, 1914, 18.

⁴ Laws, 1915, 845.

⁵ Laws, 1915, second part, 3 ff.

⁶ Laws, 1915, 242.

⁷ Laws, 1915, 404.

⁸ Laws, 1915, 549.

⁹ Laws, 1915, 226.

¹⁰ Laws, 1915, 474.

¹¹ Laws, 1915, 665.

¹² Laws, 1915, 25.

consin directed the conservation commission to investigate all matters relating to fish, game and wild life, and recommend a revision and codification of the laws relating to those subjects.¹³ In Idaho the governor was authorized to appoint a commission of five persons to revise and codify the irrigation and drainage laws of the State and draft and prepare the necessary bills and recommendations.¹⁴ Massachusetts directed the board of education to compile the statutes relating to public education and to report and recommend amendments.¹⁵ The time allowed to the state board of health to codify the health laws was extended.¹⁶ The secretary of state is authorized to compile the general laws relating to towns;¹⁷ the commissioner of weights and measures to codify the laws relating to weights and measures;¹⁸ and the special commission created to investigate the laws governing liens and mortgages is authorized to codify the laws on those subjects.¹⁹

In Indiana two codifications were authorized. A commission consisting of the secretary of the state board of health, the secretary of the state board of pharmacy, the secretary of the state board of registration and examination and the director of the bureau of legislative information and one additional member to be appointed by the governor is authorized to prepare a revision and codification of the statutes concerning health and medicine, including the laws regulating the subjects of the manufacture, handling and sale of drugs, medicine, narcotics and poisons, the sale of intoxicating liquors for medical purposes, and the practice of medicine, dentistry, nursing, pharmacy and veterinary science.²⁰ A second commission, consisting of two mine operators and two miners, appointed by the governor, the director of the bureau of legislative information and a mining engineer appointed by the director of the United States bureau of mines, was created to codify all of the mining laws of the State and report to the general assembly of 1917.²¹

CHARLES KETTLEBOROUGH.

Indiana Bureau of Legislative Information.

Reforms in legal systems. In response to the increasing demand for speedier and more accurate justice the legislatures of a considerable

¹³ Laws, 1915, 1007.

¹⁴ Laws, 1915, 251.

¹⁵ Laws, 1914, 1002.

¹⁶ Laws, 1914, 990.

¹⁷ Laws, 1914, 1026.

¹⁸ Laws, 1914, 1029.

¹⁹ Laws, 1914, 1038.

²⁰ Laws, 1915, 32.

²¹ Laws, 1915, 597.

number of States are endeavoring to accomplish something in this direction. The attempts of 1914 and 1915 fall with some degree of accuracy into a fourfold classification as follows: The reorganization of courts, establishment of municipal courts, reforms in trial by jury and simplification of procedure.

Reorganization of courts. Alabama now provides a circuit court in every county and follows the lead of other States in consolidating the chancery court, and all other courts of record with the exception of the probate court, into the circuit court.¹ Alabama has also abolished the justice of peace courts in cities having a population of 35,000 or more and confers their jurisdiction upon the courts of common pleas.²

A constitutional amendment was attempted in California to lengthen the term of superior judges to twelve years and subject them to recall, but California citizens appeared unready for this reform and the measure was defeated.

The city court of Savannah, Georgia is divided into departments.³

The city courts of Illinois are given concurrent jurisdiction with circuit courts in civil cases both in law and chancery and in all criminal cases arising in the city.⁴

The general assembly of Maryland, by constitutional amendment, has been given the power to enact laws for the suspension of sentence by the court, for any form of indeterminate sentence in criminal cases and for the release of convicts upon parole.

Michigan has passed an extensive judicature act comprising 482 pages, providing for a revision and consolidation of the statutes relating to the organization and jurisdiction of the courts, their powers and duties and judges and officers; the forms of civil actions, pleadings, evidence, practice and procedure.⁵ The justices of the supreme court are given the power to establish and modify practice in their court and all other courts of record in cases not provided for by statute, with a view to the attainment of certain enumerated improvements in practice.

Missouri has created a third division of the sixth judicial circuit of the State and has empowered the judges en banc to distribute and transfer cases.⁶ In the circuit court of St. Louis the business is to be classified, arranged, distributed and assigned among the judges in such manner as a majority of them shall decide.⁷

¹ Laws, 1915, 279.

² Laws, 1915, 825.

³ Laws, 1915, 122.

⁴ Laws, 1915, 350.

⁵ Laws, 1915, 569.

⁶ Laws, 1915, 257.

⁷ Laws, 1915, 263.

Montana provides that each judicial district having more than one judge may divide the court into departments, prescribe the order of business and make rules for the government of the court.⁸

A commission to aid the supreme court is Nebraska's idea in solving the problem of higher court congestion.⁹

A constitutional amendment is proposed by the Oklahoma legislature for the consolidation of the supreme court and the criminal court of appeals and making the latter a division of the former.¹⁰ Before waiting for relief from this quarter, however, the governor has been authorized, with the approval of the supreme court, to appoint nine commissioners as a supreme court commission to assist the supreme court.¹¹

Oregon makes a departure in the creation of a small claims department of each of the district courts for the handling of cases arising out of money claims not exceeding twenty dollars. These courts are to have a simplified procedure and informal pleadings. No attorney will be permitted except by the special consent of the judge.¹²

Juvenile courts have just been created in Rhode Island by providing that the district courts shall, at times, sit as juvenile courts.¹³

All cities in Virginia of 50,000 or more inhabitants are to elect a special justice of the peace to be known as justice of the juvenile and domestic relations court. The court is given exclusive jurisdiction of juvenile and domestic relations cases.¹⁴

Municipal courts. A considerable number of States have provided that their large cities, and in some cases also smaller cities, shall follow the noteworthy lead of Chicago in establishing municipal courts. Aside from the few differences that might be expected these new courts are formed along the plan of the Chicago court. In general the chief provisions are: the nomination and election of judges on a non-partisan ballot, the abolition of justice of peace courts, a departmental division of the court and a classification and distribution of the litigation among the several departments, a jury trial only upon written demand. Such courts were established in Arkansas (cities of the first class),¹⁵ Georgia (Boston),¹⁶ Sylvester,¹⁷ Columbus,¹⁸ Darien,¹⁹ Leesburg,²⁰ Savannah,²¹

⁸ Laws, 1915, 11.

⁹ Laws, 1915, 377.

¹⁰ Laws, 1915, 569.

¹¹ Laws, 1915, 113.

¹² Laws, 1915, 517.

¹³ Laws, 1915, 12.

¹⁴ Laws, 1914, 82.

¹⁵ Laws, 1915, 340.

¹⁶ Laws, 1914, 194.

¹⁷ Laws, 1914, 215.

¹⁸ Laws, 1915, 63.

¹⁹ Laws, 1915, 79.

²⁰ Laws, 1915, 101.

²¹ Laws, 1915, 124.

Baxley—amended,²² Blackshear—amended^{23,24}); Iowa (20,000 or more inhabitants);²⁵ Kansas (16,000 or more);²⁶ Minnesota (1,000 or more);²⁷ Nebraska (25,000 or more);²⁸ New Hampshire (2000 or more);²⁹ Ohio (Columbus).³⁰ Municipal court acts amended along the liberal plan outlined above are: New York (New York City),³¹ Ohio (Cleveland,³² and Cincinnati).³³

Reforms in trial by jury. Some States are making in all trial courts the same changes in the jury system that have been noted in municipal courts. Alabama has so provided.³⁴ All civil cases are to be tried without jury unless the plaintiff at the time of filing his complaint endorses a demand thereon for a jury trial or unless the defendant makes such a demand at the time of filing his initial pleading. Some confusion has arisen in the enactment of this legislation, for another act of the same session treats the same matter and with the difference that the defendant is given thirty days to make his demand for a jury trial.³⁵

Massachusetts provides that a party bringing an action in the municipal court of Boston which might have been begun in the superior court is deemed to have waived his right of trial by jury and also his right of appeal to the superior court.³⁶

In all the county courts of Pennsylvania a jury trial is now to be had only upon request.³⁷

South Dakota provides that in all civil actions tried in the circuit, county or municipal courts where a jury of twelve is required, the verdict may be rendered by five-sixths.³⁸

Wyoming has modified the jury system as follows:³⁹ In all cases arising out of contracts a jury trial if desired must be demanded. The time for making the demand differs from other States. It must be made by the defendant when he files his answer to the plaintiff's complaint, or by the plaintiff when he files his reply to the defendant's answer or, if the plaintiff files no reply, the demand must be made at the time the reply would be due. The party making the demand is required to deposit twelve dollars. An extra twelve dollars is then to

²² Laws, 1914, 184.

²³ Laws, 1914, 188.

²⁴ Laws, 1914, 189.

²⁵ Laws, 1915, 46.

²⁶ Laws, 1915, 231.

²⁷ Laws, 1915, 106.

²⁸ Laws, 1915, 371.

²⁹ Laws, 1915, 32.

³⁰ Laws, 1914-15, 365.

³¹ Laws, 1915, 836.

³² Laws, 1914-15, 274.

³³ Laws, 1914-15, 481.

³⁴ Laws, 1915, 824.

³⁵ Laws, 1915, 939.

³⁶ Laws, 1914, 368.

³⁷ Laws, 1915, 48.

³⁸ Laws, 1915, 467.

³⁹ Laws, 1915, 58.

be recovered from the unsuccessful party and where the party making the deposit is successful he is reimbursed by the inclusion of the extra twelve dollars in his judgment.

Simplification of procedure. The movements in this direction vary greatly in the different States but wherever an attempt has been made it is aimed directly at some archaic relic in our legal procedure and is sure to accomplish something in a field where efforts are sorely needed.

California has provided that in lieu of a bill of exceptions taken in the trial court an appeal may be taken by merely requesting a transcript of the record.⁴⁰

Delaware has increased the number of jury challenges without cause to six.⁴¹

All defendants charged with misdemeanors in Bryan County, Georgia, shall not have the right to demand an indictment by a grand jury but shall go to trial upon a written accusation based on an affidavit.⁴² This will undoubtedly expedite the business of the court but the value of such an innovation may be questioned.

Indiana is endeavoring to lessen the law's delay in appeals by providing that certain classes of cases, eighteen in number, shall pass the appellate court and go directly to the supreme court.⁴³ This suggests the abolition of the appellate court and the passing of the judges, rather than cases, to the supreme court as the next possible step.

Maine aims at greater efficiency in providing that justices may have hearings and render judgments in vacation time.⁴⁴

To "expedite the administration of justice by eliminating useless technicalities and vexatious delays," Virginia provides that all courts may at any time permit any proceeding to be amended or supplemented, and further that the court, at every stage of the proceeding, must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.⁴⁵

Vermont at last says that no pleading shall fail for want of form.⁴⁶

CLAUDE H. ANDERSON.

Indianapolis, Ind.

⁴⁰ Laws, 1915, 206.

⁴¹ Laws, 1915, 681.

⁴² Laws, 1914, 202.

⁴³ Laws, 1915, 149.

⁴⁴ Laws, 1915, 293.

⁴⁵ Laws, 1914, 641.

⁴⁶ Laws, 1915, 176.

NEWS AND NOTES

PERSONAL AND BIBLIOGRAPHICAL

EDITED BY CHARLES G. FENWICK

Bryn Mawr College

Prof. John A. Fairlie, of the University of Illinois, has been assigned the general editorship of the August and November issues of *THE POLITICAL SCIENCE REVIEW* pending action of the executive council of the association upon the resignation of Dr. W. W. Willoughby. The department of book reviews is temporarily in charge of the editor of News and Notes.

The Pacific Coast Branch of the American Political Science Association is planning to hold its third annual meeting at Portland, Ore., in September. Mr. J. R. Douglas of the University of California is secretary of the branch, and Prof. W. F. Ogburn of Reed College, Portland, is chairman of the arrangements committee.

Prof. Alvin S. Johnson, of Cornell University, has been appointed professor of political science at Leland Stanford University.

Prof. David P. Barrows of the University of California, has been engaged in Belgian relief work at Brussels.

Prof. Raymond G. Gettell, of Amherst College, is giving courses in American government and European municipal government in the summer session of Columbia University.

Mr. William G. Avirett has been appointed assistant in political science at Amherst College.

Prof. Robert McNutt McElroy, head of the department of history and politics at Princeton University will be absent during the academic year 1916-1917, and will lecture at the request of the Chinese government in various universities of China. During his absence Prof. Dana C. Munro will act as head of the department.

Harold Scott Quigley, Ph.D., University of Wisconsin, has been appointed instructor in the department of history and politics of Princeton University. Leonard P. Fox, Ph.D., University of Pennsylvania, has also been appointed instructor in the same department.

Dr. John Bauer, who has worked with the New York public service commission and who is a frequent contributor to scientific journals on subjects in the field of accounting and public utilities, has been appointed professor of economics at Princeton University.

Prof. Marshall S. Brown, head of the department of history and political science of New York University, has been appointed acting dean of the College of Arts and Pure Science of that institution for the coming year.

Prof. J. W. Jenks, of New York University, who has been in the far east on a six months' leave of absence, will resume his regular duties at the university in the fall.

Prof. Karl F. Geiser is conducting a course on international relations in the summer session of Oberlin College. The course is offered under the auspices of the Carnegie Peace Foundation and deals with international politics from an historical and objective point of view, especially during the period since 1871.

Dr. Robert T. Crane, assistant professor of political science at the University of Michigan, has been promoted to an associate professorship.

Dr. L. D. Upson, director of the newly established bureau of governmental research at Detroit, has been appointed lecturer in municipal administration at the University of Michigan. Dr. Upson was formerly director of the Dayton bureau of municipal research.

Prof. F. M. Anderson of Dartmouth College is conducting a course in European governments at the summer session of the University of Illinois.

Dr. John Mez, lecturer for the American association for international relations, is giving a course of lectures at the summer session of the University of Illinois.

Mr. Henry G. Hodges, who takes his doctor's degree at the University of Pennsylvania this year, has been appointed to an instructorship in the new school of municipal administration and public service of Western Reserve University, Cleveland, Ohio.

Mr. Charles Holloway Crennan, who takes his doctor's degree at the University of Pennsylvania this year, has been appointed an instructor in the Wharton School of the University of Pennsylvania. Mr. Crennan will give courses on railroad transportation, history of economics and commerce, and economic doctrines and social problems. For eight weeks this summer Mr. Crennan will take Professor Bates' work in political science in the University of Indiana.

Mr. John A. Dunaway has been appointed an instructor in economics in the Wharton School of the University of Pennsylvania.

Mr. A. C. Hanford has been appointed an instructor in government at Harvard University; and Philip Quincy Wright, Ph.D., University of Illinois, has been appointed as assistant in international law at the same institution.

Prof. Payson J. Treat, of Stanford University, has been appointed Albert Shaw lecturer on diplomatic history at Johns Hopkins University for 1917. His lectures will deal with the beginnings of American diplomatic relations with Japan.

Mr. Robert M. Jameson, for the past three years secretary of the bureau of municipal research and reference at the University of Texas, has been appointed to the Ozias Goodwin Fellowship in government at Harvard University for the year 1916-1917. Mr. Edward T. Paxton has been advanced to the position of secretary of the bureau, and instructor in government. He will have charge of a new course to be offered in municipal research methods, intended especially to fit men for positions in municipal research bureaus.

Prof. Herman G. James, director of the Texas bureau of municipal research and reference, is preparing a volume on municipal functions, to be issued early in 1917 as one of the National Municipal League series.

Miss Alice M. Holden, who has been secretary of the bureau of municipal research at Harvard University, has been appointed to the

staff of Vassar College, where she will organize and conduct courses in municipal government.

Stanford University is seriously considering the institution of the four quarter system. The law school has conducted summer sessions for several years, and it is generally felt that the University should remain open during the summer, which is in California one of the pleasantest seasons of the year.

Under the supervision of Prof. Benj. F. Shambaugh, head of the department of political science at the State University of Iowa, a volume on *Statute Law-making in Iowa* is being compiled for publication by the state historical society of Iowa.

Two monographs, one by Dr. Sudhindra Bose on *Some Aspects of British Rule in India* and the other by Dr. Lorin Stuckey on *The Iowa State Federation of Labor*, have recently been published by the State University of Iowa.

The Harris political science prizes, established by Mr. N. W. Harris, president of the Harris Trust and Savings Bank of Chicago, for the best essays in any department of political science and open to undergraduates of universities and colleges in Indiana, Illinois, Michigan, Minnesota, Wisconsin and Iowa, were awarded for 1915-1916 to R. J. Cunningham, University of Wisconsin, subject, "The Reorganization of the Judicial System in Wisconsin," to T. B. Bassett, Northwestern University, subject, "The Reorganization of the Legislature in Illinois," and to J. A. Swisher, University of Iowa, subject, "The Reorganization of the Executive Department of Iowa State Government." The subjects for 1916-1917 are: 1, Selection of public servants; 2, National control of railroads; 3, Problems of statute law-making; 4, International affairs: a program for the proposed League to Enforce Peace, and the military policy of the United States in relation to its foreign policy. Additional information may be obtained from Professor N. D. Harris, Evanston, Illinois.

The first annual assemblage of the League to Enforce Peace was held in Washington, D. C., on May 26 and 27. The purpose of the meeting was to devise and determine upon measures for giving effect to the proposals adopted at the conference held in June, 1915, at Independence

Hall, Philadelphia, for a league of nations to enforce peace. Delegates were present from various organizations interested in the cause of international peace and from many of the larger universities and colleges. The meetings were presided over by the Hon. William Howard Taft and consisted of addresses by prominent publicists upon the platform of the league together with a consideration of plans for giving effect to the league program. Under the general topic of "American National Policies and the League Program," Mr. Taft discussed the constitutionality of the program, Prof. G. G. Wilson of Harvard University spoke of the Monroe Doctrine and Mr. Talcott Williams answered the objection of the danger of entangling alliances—these three being the chief addresses of interest to the political scientist. At the dinner with which the meetings closed President Wilson delivered the closing address and, while disclaiming any intention of discussing the program of the league, called attention to the fact that the United States has become, whatever its wish in the matter, a participant in the affairs of the world; and he asserted that in consequence the United States was willing to become a partner in any feasible association of nations formed in order to realize certain fundamental objects, namely, the right of every people to choose the sovereignty under which they shall live, the right of small states to enjoy equal security in sovereignty and territorial integrity, and the right of the world to be free from disturbances of the peace caused by the aggression of one state upon another.

The American Society of International Law held its tenth annual meeting in Washington, D. C., on April 27-29. The opening address was delivered by Mr. Elihu Root, president of the Society, following which a paper was read by Mr. David Jayne Hill on "The possible means of increasing the effectiveness of international law." On the general subject, "The relation of the export of arms and munitions of war to the rights and obligations of neutrals," papers were read by Profs. James W. Garner and Philip Marshall Brown. Prof. Raleigh C. Minor spoke on the topic of "The rules of law which should govern the conduct of submarines with reference to enemy and neutral merchant vessels and the conduct of such vessels toward submarines," and Profs. Amos S. Herschey and Francis N. Thorpe discussed the question, "Should the right to establish war zones on the high seas be recognized and what, if any, should be the provisions of international law on this subject?" At the last formal meeting the report of the standing committee on the study and teaching of international law was presented.

The American Academy of Political and Social Science held its twentieth annual meeting in Philadelphia on April 28 and 29. The significant feature of the meeting was the presence of official delegations appointed by the governors of most of the States and of delegates from a large number of scientific associations and other organizations interested in the cause of international peace. The general subject of the meetings was, "What Shall the United States Stand for in International Relations?" The separate topic, "The Significance of Preparedness" gave rise to a lively discussion between the advocates and opponents of increased military and naval appropriations. The proceedings of the meeting will be published as usual in the form of a special volume to appear in July.

The committee on field work of the association of Urban Universities has issued a questionnaire directed to all instructors in American universities and colleges having supervision of field work of collegiate grade in any department of instruction. The object of the committee is to ascertain the various methods at present in use in the conduct of field work and to prepare a report incorporating the results of the investigation and recommending to the association certain standards and methods in the conduct of field work based upon the result of the inquiry. The chairman of the committee is P. R. Kolbe, Municipal University of Akron, Akron, Ohio.

The subjects for the Hart, Schaffner and Marx economic prizes for the year 1917 have been announced and include by preference the following titles: 1. The effect of the European war on wages and the activity of labor organizations in the United States; 2. Social insurance; 3. The practical working of the federal reserve banking system; 4. The theory and practice of a minimum wage law; 5. Emergency employment. In addition there is a long list of available subjects which may be obtained from the secretary of the committee in charge, Prof. J. Laurence Laughlin, University of Chicago.

The Immigration Journal is a new monthly magazine devoted exclusively to immigration, naturalization, and closely related subjects. The purpose of the journal is to discuss all phases of the problem and to present concisely and without prejudice current information concerning the immigration movement and the immigrant as a factor in the population of the United States. The editor of the journal is Mr. W. W.

Hubbard who was clerk of the senate committee on immigration for several years and later secretary of the United States immigration commission.

"Military Service, Compulsory or Volunteer" was the general subject of the semi-annual meeting of the Academy of Political Science held at Columbia University on May 18. The subject was discussed from the point of view of fundamental principles, methods of military training, and the obligation of citizenship to the common defense.

In a brief pamphlet entitled *America's Best Defense*, Mr. Walter W. Davis attempts to suggest a program for the United States in view of the present situation in Europe. He insists that if the United States is to be drawn into the war it should only be upon an issue involving principles in which the permanent interests of mankind are embodied. These principles are then outlined, and it is urged that the United States obtain a definite statement from England (as the strongest naval power on whose side it appeared that we might be ranged) as to her attitude on those fundamental issues upon which the future peace of the world must rest.

The Macmillan Company announce the publication this summer of a volume entitled *Nationalism, War and Society*, by Edward Krehbiel, which purports to be "a study of nationalism and its concomitant, war, in their relation to civilization; and of the fundamentals and the progress of the opposition to war." The material is to be presented in outline form, as in the case of the author's *Syllabus*, prepared in coöperation with David Starr Jordan, and the aim is to state both sides of the case.

Rights and Duties of Neutrals: A Discussion of Principles and Practices, by Daniel Chauncey Brewer (New York and London: G. P. Putnam's Sons, 1916, pp. ix, 260), is largely a reprint of articles contributed by the author to the *Army and Navy Journal*, and as a discussion of the issues raised by the present war it is not without interest, though it falls very far short of being a treatise on the rights and duties of neutrals. The author proves conclusively, if any proof were needed, that many of the rules of international law set forth by the text writers fail to meet present-day conditions. His discussion of the unsatisfactory character of the present rules of contraband and the difficulties encountered in their practical application forms the most interesting

part of the book. The style is obscure and the few conclusions drawn are wholly negative.

In a little book of 200 pages entitled *The New Public Health* (New York: The Macmillan Company, 1916) Dr. H. W. Hill, director of the institute of public health of London, Ontario, attempts to show the changes which have come over public health administration in the past twenty years and which have given rise to what he terms the "new public health." The older sanitarians were primarily concerned with factors in our environment, with water supplies, milk supplies, drainage, sewage disposal, and ventilation, hoping that by the regulation of those on a scientific basis infectious diseases might be eliminated from the community. The new public health administration, according to Dr. Hill, is primarily interested in the sick individual, and by quarantine and disinfection attempts to prevent his becoming a source of infection to others during the time he is capable of carrying disease. It is a debatable point if the author is justified in giving so much credit for this new tendency in public health administration to Dr. Chapin of Providence in view of the intensive studies of diphtheria and typhoid fever which have come from Germany and the demonstration there of what we call "disease or bacillus carriers." Whether all of Dr. Hill's conclusions are accepted or not, however, his book is a clear, concise explanation of certain new methods of public health administration which have been introduced in the past few years, and which are likely to prove of far-reaching influence in America.

Only the name of its distinguished author, William Roscoe Thayer, justifies a notice of the small volume, *Germany vs. Civilization* (Boston: Houghton Mifflin Company, 1916, pp. 238) which bears as its sub-title "Notes on the Atrocious War." After a denunciation of President Wilson's criminal silence in not protesting against the violation of the neutrality of Belgium the author describes certain ugly traits of character exhibited by the Teutonic race in the course of history and their present manifestations, but the unmeasured condemnation and the unqualified denunciation necessarily weaken the force of what is true in the indictment and are only convincing to the already convinced. Of a similar unrestrained character and possessing less intrinsic merit is the volume, *The Greater Tragedy and Other Things*, by Benjamin A. Gould (New York, G. P. Putnam's Sons, 1916, pp. 189) the gist of which is contained in the words; "If we have any appreciation of shame,

any dislike of national degradation, any understanding of national honor, we will throw Wilson out of the office he has desecrated."

"To start with a small certainty" the volume by Marshall Kelly entitled *Carlyle and the War* (Chicago, Open Court Publishing Company, 1916, pp. 337) will never be read to the last chapter by any reader susceptible to the ordinary influences that make for dizziness. The author, if we understand him rightly, attempts to set forth the judgment Carlyle would have passed upon the present war were he alive to witness it, but in so doing he apes Carlyle's style, which only the master's touch could justify, and carries us forward through a succession of mental jolts and jars until even the most patient must despair of following the thought through the words around it. The chapters discuss in turn the concert of Europe, ostensible causes of the war, the balance of power, and the real causes of the war; but the defense of Germany must be done more harm than good by the extravagance of the statements made in its behalf. The author has done badly a task which might have been profitable if done well. The object which he had in view can best be set forth in his own words: "Briton, Frank and Russ, with all the world to help, and damn the German cur, is the Mob-cry of the hour. But Briton with German had been a better bond for peace in Europe; and, if America is ever to be a mediator, she will need to cease *her* swelling of that Mob-cry."

The Open Court Publishing Company has contributed to the literature of the war a series of volumes of varying merit, the dominant note of which is an appeal to impartiality in the judgment of America concerning the position of Germany in the war. The least convincing to the average American, it is believed, will be the volume *Belgium and Germany: a Dutch View*, by Dr. J. H. Labberton, translated by W. E. Leonard (Chicago, 1916, pp. 153). The author discusses the violation of the neutrality of Belgium from the point of view of political and moral philosophy and reaches the conclusion that with respect to the treaty of 1839 Germany's personal obligation to keep her promise was set aside by a higher moral duty, the law of release operating "whenever the living present utters commands of so high and imperative a character that the past and the ethical command of loyalty to that past must give way before them." The ethical command is in this case, of course, the necessity referred to by the imperial chancellor. But the graver matter is to reconcile Germany's release from her

promise with the "dreadful situation in which poor Belgium finds herself today." This is done by the theory of a state with an "ethical genius," for which Germany gives greater promise than any other nation, Prussia being the "ethically sound kernel of Europe." Hence the conclusion is reached that Germany's duty to her "moral vocation" superseded her duty to respect Belgium's personality.

Above the Battle, by Romain Rolland, translated by C. K. Ogden (Chicago, 1916, pp. 212) is a plea by the well-known author of *Jean Christophe* for a saner judgment of Germany by distinguishing between the German people and their military and intellectual rulers, and at the same time a further appeal to those who influence public opinion through the press not to kindle the flames of hatred against Germany for crimes for which the people are only partly responsible. The book is eloquent in its moral appeal, but the several chapters, being a collection of contributions to the press, are disconnected and inconclusive.

Germany Misjudged, by Roland Hugins (Chicago, 1916, pp. 114) is offered by the author as "an appeal to international good will in the interest of a lasting peace" and consists of a reprint of articles contributed to *The Open Court*. Three of the chapters are in the form of open letters to Germany, England and France, and the last chapter deals with the attitude of America. The defense of Germany is on many points unsupported by other evidence than the author's statement and is frequently marked by unqualified assertions which are too sweeping to be convincing. The appeal to America to study the underlying causes of the war and to approach all parties in charity and forbearance is above criticism.

Of considerably greater value than the three preceding volumes is *Justice in War Time*, by Bertrand Russell, which consists of a number of essays, previously published separately, dealing with ethical aspects of the war, supplemented by a political essay entitled "The Entente Policy, 1904-1915," which is presented in the form of a reply to Prof. Gilbert Murray's *Foreign Policy of Sir Edward Grey, 1906-1915*. The ethical principles of the author may be summed up as a criticism of "the fundamental irrational belief, on which all the others rest, . . . that the victory of one's own side is of enormous and indubitable importance, and even of such importance as to outweigh all the evils involved in prolonging the war." In sustaining this thesis the author points

out the tendency of modern diplomacy in the hands of the aristocracy, whether of blood or of wealth, to emphasize the rivalries between nations at the expense of their solidarity of fundamental interests, and he asserts that progress in international relations will depend upon the control of foreign relations by a class of the community in closer touch with common life. The essay on the Entente policy discusses the influence of the Moroccan question in stimulating war-like feeling both in Germany and in France, as well as the effect of the Anglo-Russian entente in intensifying the rivalry between Germany and Great Britain in respect to the development of Asia Minor. A final chapter on "What our policy ought to have been" shows how on many points England pursued a policy of needless hostility to Germany and helped to increase the hold of militarism on German public opinion.

Arrangements have been made with the Macmillan Company for publishing the report of the Committee on Instruction of the American Political Science Association, presented at the Washington meeting in December, 1915. This will be issued in substantially the form of the report of the Committee of Seven of the American Historical Association; and it is expected that the volume will be on sale and ready for distribution by September 1. This report should be of service, especially to teachers in the public schools and the smaller colleges.

DECISIONS OF AMERICAN COURTS ON POINTS OF PUBLIC LAW

JOHN T. FITZPATRICK

Law Librarian, New York State Library

Attorney's Fees—Act Imposing in Certain Cases. Sorenson vs. Webb. (Mississippi. March 27, 1916. 71 S. 273.) An act imposing a penalty in a reasonable attorney's fee upon every manufacturer for failure to pay his employees once in every month is unconstitutional as discriminating in favor of other classes of employers; there is no just and proper classification providing for the imposition of such a penalty upon manufacturers in contradistinction to other employers.

Divorce—Foreign Decree. Lister vs. Lister. (New Jersey. January 3, 1916. 97 A. 170.) A decree of divorce by a court in Nevada undertaking to dispose of the status in respect of marriage of spouses

not resident in that State is a nullity, as that State is powerless either by an act of its legislature or by a decree of one of its courts to fix the status of a person as married or unmarried when such person is only transient in that State but is actually a resident of New Jersey. There is no principle of comity which interferes with the power of the State of New Jersey to deny the right of a court of Nevada to determine the matrimonial status of such a person.

Employers' Liability Act—Jury. Minn. & St. Louis R. R. vs. Bombolis. (United States. May 22, 1916. 241 U. S. 211.) The first ten amendments to the United States Constitution are not concerned with state action; a jury verdict in a state court in an action under the employers' liability act, which is not unanimous, but which is legal under the law of the State, is not illegal as violating the seventh amendment. While a state court may enforce a right created by a federal statute, such court does not by performing that duty derive its authority as a court from the United States but from the State; and the seventh amendment requiring a verdict by the common-law jury does not apply to it.

Employment Agencies—Licensing. Brazee vs. Michigan. (United States. May 22, 1916. 241 U. S. 340.) A state statute imposing a license fee to operate employment agencies and prohibiting employment agents from sending applicants to an employer who has not applied for labor, is not unconstitutional as depriving one operating an employment agency of his property without due process of law or as denying him equal protection of the laws.

Full Crews. St. L. & Iron Mtn. Ry. vs. Arkansas. (United States. April 3, 1916. 240 U. S. 518.) The statute of Arkansas requiring full switching crews on railroads extending one hundred miles in length, is not unconstitutional as either depriving of property without due process of law or as denying equal protection of the law or as interfering with interstate commerce.

Gaming—Discrimination in Favor of Boards of Trade. Miller vs. Sincere. (Illinois. April 20, 1916. 112 N. E. 664.) A statutory provision for the recovery by the loser in any gaming, speculation or gambling device from the winner of the amount paid, except where the transaction is conducted through a regular board of trade, is invalid as

being an unconstitutional discrimination between individuals engaged in the same business and granting special privileges and immunities to certain individuals.

Highways—Labor Thereon—Involuntary Servitude. Butler vs. Perry (United States. February 21, 1916. 240 U. S. 328.) A reasonable amount of work on public roads near his residence is a part of the duty owed by an able-bodied man to the public; and a requirement by the State exacting such work does not amount to imposition of involuntary servitude within the prohibition of the thirteenth amendment; nor does the enforcement of such requirement deprive persons of their liberty and property without due process of law in violation of the fourteenth amendment. The object of the thirteenth amendment was liberty under protection of effective government and not destruction of the latter by depriving it of those essential powers which have always been properly exercised before its adoption. The term involuntary servitude as used in the thirteenth amendment was intended to cover those forms of compulsory labor akin to African slavery and not to interdict enforcement of duties owed by individuals to the State.

Income Tax—Constitutionality. Brushaber vs. Union Pac. R. R. (United States. January 24, 1916. 240 U. S. 1.) The income tax law of 1913 is not unconstitutional as violative of the sixteenth amendment. That amendment was obviously intended to simplify the tax situation and make clear the limitations upon the taxing power of Congress, and not to create radical and destructive changes in our constitutional system. The Constitution had recognized the two great classes of taxation as direct and indirect and applied the rule of apportionment as to the former and the rule of uniformity as to the latter. But by the sixteenth amendment all income taxes are now relieved from the rule of apportionment. Nor is the income tax law unconstitutional by reason of retroactive operation; nor as denying due process of law or equal protection of the law by reason of the classification therein of things or persons subject to the tax; nor because the provisions for collecting income at the source deny due process of law by reason of the duties imposed upon corporations without compensation in connection with the payment of the tax by others.

Income Tax—Taxation of Mining Corporations. Stanton vs. Baltic Mining Co. (United States. February 21, 1916. 240 U. S. 103.)

There is no authority for taking taxation of mining corporations out of the rule established by the sixteenth amendment; nor is there any basis for the contention that, owing to inadequacy of the allowance for depreciation of ore body, the income tax is equivalent to one on the gross product of mines, and as such, a direct tax on the property itself, and therefore beyond the purview of that amendment and void for want of apportionment. Independently of the operation of the sixteenth amendment a tax on the product of a mine is not a tax upon property as such because of its ownership, but is a true excise levied on the result of the business of carrying on mining operations.

Labor—Right to Work as Property Right. Bogni vs. Perotti. (Massachusetts. May 19, 1916. 112 N. E. 853.) The act of 1914 declaring that the right to work shall no longer be a property right and prohibiting injunction in certain labor cases, is invalid as depriving the laborers of the equal protection of the laws, since it cuts off the right to resort to equity respecting the property right of laboring men and destroys the equality of laboring men with others. The right to work is property of which one cannot be deprived by a simple mandate of the legislature; and the mere fact that it is also a part of the liberty of the citizen does not affect its character as property.

Legislature—Determination of Election of Members. Dinan vs. Swig. (Massachusetts. April 6, 1916. 112 N. E. 91.) The act of 1913 requiring three judges of the superior court upon petition of voters to investigate an election, and upon finding any corrupt practice in the election of a member of the legislature, to enter a decree declaring the commission of a corrupt practice in his election and to certify the decree and declaration to the secretary of the commonwealth for transmission to the presiding office of the legislative body to which the defendant was elected, is violative of the prerogative vested exclusively in each branch of the general court which it alone can exercise and which it cannot delegate.

Monopolies. McFarland vs. American Sugar Co. (United States. April 24, 1916. 241 U. S. 79.) An act of the State of Louisiana relating to the business of refining sugar and creating the rebuttable presumption that any person systematically paying in that State a less price for sugar than he pays in any other State is a party to a monopoly or conspiracy in restraint of trade, is unconstitutional, the classifi-

cation therein, if not confined to a single party, being so arbitrary as to be beyond possible justice, and the presumptions created having no foundation except on intent to destroy. The legislature may not declare an individual guilty or presumptively guilty of a crime.

Public Utility Commissioners—Powers. Public Service Elec. Co. vs. Board of Public Utility Commissioners. (New Jersey. March 6, 1916. 96 A. 1013.) The act conferring upon the board of public utility commissioners power to require every public utility to comply with the laws of the State and municipal ordinances and to conform to the duties imposed upon it thereby or by the provisions of its charter, does not confer upon the board the power to decree the specific performance of a contract; the latter is an equitable power exclusively inherent in the court of chancery; and even if the act in express terms had bestowed such a power upon the board, it would have been an unlawful invasion of the court's exclusive prerogative.

Removal of Causes to Federal Courts—Prohibition by States. Wisconsin vs. Phila. & Reading Coal Co. (United States. May 22, 1916. 241 U. S. 329.) A provision of the state statute providing for the revocation of the license of a foreign corporation to do business within the State in case of removal, or application to remove, any action commenced against it by a citizen of that State to a federal court, is unconstitutional; the judicial power of the United States is a power wholly independent of state action, which the states may not directly or indirectly destroy, abridge or render inefficacious.

Rendition of Criminals between States. Innes vs. Tobin. (United States. February 21, 1916. 240 U. S. 127.) Prior to the adoption of the Constitution fugitives from justice were surrendered between States conformably to what were deemed to be the principles of comity. Article four of the Constitution is intended to embrace fully the subject of the rendition of such fugitives between the States and to confer upon congress authority to deal with that subject. Section 5278 of the revised statutes which was enacted by congress under the authority vested in it by the Constitution for the purpose of controlling interstate rendition was intended to be controlling and exclusive of state power; and this section expressly or by necessary implication prohibits the surrender in one State for removal as a fugitive from justice to another State of a person who clearly was not and

could not have been such a fugitive from the demanding State. However, the doctrine of asylum applicable under international law, by which a person extradited from a foreign country cannot be tried for an offense other than the one for which the extradition was asked, does not apply to interstate rendition.

Taxation—Corporations—Interstate Commerce. *Kansas City Ry. vs. Kansas.* (United States. February 21, 1916. 240 U. S. 227.) The tax imposed by Kansas laws of 1913, chapter 135, on the privilege of being a corporation is not laid upon interstate commerce or receipts therefrom, fluctuating with the volume of interstate business, but is simply graduated according to paid up capital with a reasonable maximum; and it is not, as to a domestic corporation engaged in both interstate and intrastate commerce, invalid either as a violation of the commerce clause as taxing interstate commerce or of the due process clause of the fourteenth amendment as taxing property beyond the jurisdiction of the State.

Theaters—Right to Admission. *Woolcott vs. Shubert.* (New York. February 22, 1916. 111 N. E. 829.) Under the common law, the theater, though affected by public interest justifying licensing, is in no sense public property nor governed by the rule relative to common carriers or other public utilities, and the proprietor's right to and control of it is the same as that of any private citizen in his property and affairs, so that he may admit or exclude persons at his pleasure. The civil rights law of the State of New York providing that all persons shall be entitled to full and equal accommodation in all places of public accommodation or amusements and providing a penalty for violation in denying admission to citizens upon the ground of race, creed or color, does not destroy the common-law right to exclude persons from theaters where the rule of exclusion applies alike to all persons, and is not based on race, creed or color.

Torts—Jurisdiction of Causes of Action.—Actions under Statutes of Foreign Countries. *Hanlon vs. Frederick Leyland & Co.* (Massachusetts. March 9, 1916. 111 N. E. 907.) An action to recover damages for a tort is transitory, and can be maintained wherever the wrongdoer can be found. So the plaintiff by comity will be permitted to maintain an action in the courts of this commonwealth, under an English statute allowing an action for tort, although no right of prop-

erty, under the statute, was vested in the deceased which survives to his personal representative.

Trading Stamps—Constitutionality of Act Imposing Prohibitive License Taxes. *Rast vs. Van Deman & Lewis.* (United States. March 6, 1916. 240 U. S. 342.) The act of the State of Florida of June 5, 1913, which imposes a state license tax of \$500 and a county license tax of \$250 upon any person, firm or corporation offering trading stamps or profit sharing certificates redeemable in premiums, the license fees imposed being in addition to any other license fees or taxes, is not unconstitutional even though the license taxes as imposed are prohibitory; the right to carry on business by using trading stamps is not so protected by the federal Constitution as to render a tax thereon a violation of the due process provision of the fourteenth amendment. The statute is not open to objection as depriving of liberty and property without due process of law on account of the severity of its penalties so as to intimidate against testing its legality. A classification based on differences between a business using and one not using such stamps is not so arbitrary as to deny equal protection of the law. A distinction in legislation does not deny equal protection of the laws if any state of facts can be conceived that will sustain it; and, even though such facts or their effect may be disputed, courts cannot arbitrate such differences of opinion. It is for the legislature to discern and correct evils not only of definite injury, but also such as are obstacles to greater public welfare if within legislative authority, as is the use of such stamps. See also *Tanner vs. Little*, 240 U. S. 369; *Pitney vs. Washington*, 240 U. S. 387; *State vs. Underwood*, 71 S. 513.

Weights and Measures. *Armour & Co. vs. North Dakota.* (United States. April 3, 1916. 240 U. S. 510.) The net weight lard statute of North Dakota, which requires lard, when not sold in bulk, to be put up in containers holding a specified number of pounds net weight or even multiples thereof and labeled as specified, is not unconstitutional as denying equal protection of the law or as depriving of property without due process of law; nor is it, as to packages sent into the State and afterwards sold to consumers by retail, unconstitutional as an interference with interstate commerce.

BOOK REVIEWS

The Political Writings of Jean Jacques Rousseau. Edited from the original manuscripts and authentic editions with introductions and notes by C. E. VAUGHAN, M.A., Litt.D. In two volumes. (Cambridge: at the University Press. 1915.)

The entire body of Rousseau's writings on politics is here collected together and provided with the necessary commentary both textual and explanatory. Besides the *Économie politique*, the first draft and final version of the *Contrat social*, and the works on the government of Corsica and of Poland, the edition includes the *Discours sur l'Inégalité*, the important fragment on *L'État de Guerre*, passages from *Émile* of a definitely political character, especially the sketch of political theory in book v, illustrative excerpts from other non-political writings, the last four of the *Lettres de la Montagne*, and various minor pieces. Notwithstanding the diligence of former workers in the same field, especially MM. Dreyfus-Brisac, Windenberger, and Dufour, Professor Vaughan has been able to glean, generally from the Rousseau manuscripts at Neuchâtel, a considerable number of hitherto unpublished fragments, most of which are, however, mere variants of accepted texts. Of this new material by far the most interesting part is the series of eight autobiographical fragments, including the original draft of the close of the fifth *Lettre de la Montagne*, gathered together in an appendix. Though of interest to the student of Rousseau the relation of these fragments to his political writings is so remote that one wonders at their inclusion here. In the same appendix are found two early versions of the opening of *Les Confessions* that have already been printed. Why, then, reprint them here? Another matter of arrangement might have been managed better: Diderot's article on *Le Droit naturel*, reprinted because of its close association with the *Économie politique* and the *Contrat social*, should certainly have been relegated to an appendix.

Professor Vaughan has spared no effort to establish a definitive text of these writings and it is to be wished that the same patience might be applied to the whole body of Rousseau's work, for current editions, notably that of Hachette which is the most accessible, abound in small errors. The editor's finest achievement in the field of textual recon-

struction lies, however, where two excellent scholars—Dreyfus-Brisac and Windenberger—had preceded him: minute examination of the awkwardly grouped pages of the MS. of *L'État de Guerre* resulted in the discovery that a rearrangement of the order of the pages clarified, and did away with breaks in, the course of Rousseau's argument. The fragment is now printed in accordance with this discovery.

Short special introductions to each piece deal with matters of biography and literary history and with such details as did not fall conveniently within the limits of a general discussion. An elaborate introduction to the whole collection—"Rousseau as Political Philosopher"—centres in the thesis that "two strands of thought, the abstract and the concrete, lie side by side in his [Rousseau's] mind, forever crossing each other, yet never completely interwoven; each held with intense conviction, but each held in entire independence of the other" (p. 77). Theories derived largely from Locke undergo a self-contradictory change when under the influence of Montesquieu Rousseau applies them to **actual conditions**. Rousseau worked under the self-imposed handicap of acceptance of "the state of nature" and of "the social contract," matters of no inconvenience so long as he is the exponent of abstract individualism (as in the *Discours sur l'Inégalité* and in the opening pages of the *Contrat social*) but impossible fully to reconcile with the practical collectivism of the latter part of the *Contrat social* and of his later writings upon politics. Professor Vaughan makes no attempt to harmonize completely these two strains in the *Contrat*; indeed he recognizes that no sooner has Rousseau brought the individual to a total surrender to the service of the state than by qualifications and concessions he readmits a measure of individual liberty. The freedom possessed by the citizen of Rousseau's ideal state is "the release from the bondage of his baser self; the willing acceptance of burdens for the sake of others, of that service to a larger whole in which alone his true self, his real freedom, is to be found. In other words, it is essentially a moral freedom; a freedom which brings with it at least as much of self-sacrifice as of ease" (p. 113). What Rousseau, blind to the idea of progress, failed to see is that this ideal is a matter of gradual growth from barbarism during which time the discipline of force has been ever so slowly diminishing and the element of right as gradually taking its place. It is the acceptance of the contract idea at the very moment that he admits the non-existence of pre-social morality (thus leaving the contract without any sanction whatever) that involves Rousseau in contradictions. Of this he was himself dimly aware and his later work is

evidence of increasing realization of the value of the historic method and of the importance of the influence of climate, environment, and (though this is barely suggested) the past circumstances of a people; the state of nature and the contract are left behind; Montesquieu is substituted for Locke. Yet here, as in the case of his individualism and collectivism, the contradictions never disappear.

The volumes close with two further contributions from Professor Vaughan's pen. In an "Epilogue" written since the beginning of the War he contrasts the Roussellian idea of the state with that held by Fichte, the one that of national independence with the small, rather than the large, state as the unit, the other that of the domination of one state over the whole of Christendom. There is no effort to conceal the application of the result of this comparison to the diverse claims and ideals of the rivals in the present struggle. Finally, an appendix is devoted to a lecture, originally delivered at Leeds, on "Rousseau and his Enemies" in which are set forth the conclusions reached by Mrs. Frederika Macdonald in her *Jean-Jacques Rousseau, a New Criticism*, 1906, especially with regard to the reliability of the *Mémoires* of Mme. d'Épinay. It is noteworthy that Professor Vaughan entirely ignores Mrs. Macdonald's able defence of Rousseau against the long-standing charge of having delivered his five new-born children, one after the other, to the foundling hospital. The lecture is in quite popular form, it contains nothing not accessible in greater detail in other works, it has only the remotest relation to the political writings of Rousseau; and for these reasons is rather out of place as a conclusion to this work.

SAMUEL C. CHEW.

Vicarious Liability. By T. BATY. (Oxford: The Clarendon Press. 1916. Pp. 244.)

It may be said to be a general principle of the common as well as of the civil law that one person shall not be held liable in damages for the tortious act of another. At any rate this may be said to be so since the disappearance of the old doctrines of family, tribal, and other group forms of collective responsibility. There have always been, however, and still continue to exist certain exceptions to the rule which are expressed in such phrases as *respondeat superior* and *qui facit per alium, facit per se*, not to speak of the liability of the father for certain acts of his child. The justice as well as the legal scope of the doctrine is,

however, put to a test when this vicarious liability of the principal or employer is imposed with reference to acts which, though within the possible scope of employment, have not in fact been authorized, and may indeed have been expressly forbidden by the one who is held liable in damages for their commission. This doctrine upon both its ethical and legal sides becomes an especially important one in the field of industrial disputes when applied to the liability of trade unions or their members for the acts of their officers or other persons who may be construed to act as their agents. The ethical and juristic basis for this liability without moral or more than constructive legal fault is of course also involved in workmen's compensation acts. In the book under review the author has searched out with evident industry the cases in the English courts in which vicarious liability has been violated, and has examined with critical analysis the arguments which the court opinions have advanced, and the volume thus furnishes a valuable chapter in historical jurisprudence. Upon the whole, the principle under examination, in its modern applications at least, is found to be "dubious in origin and unjust in operation." The real reason for the present rule the author finds in the fact that, generally speaking, "the damages are taken from a deep pocket." The reviewer doubts whether these are wholly justified conclusions. Starting from purely individualistic premises, it may be impossible to defend certain forms of vicarious liability which the courts of England and the United States now support; but, socially viewed, they may in most cases be justified. Thus while it may be true that the liability is imposed because the damages are taken from the deeper pocket, the principle is not necessarily "unjust in operation" when regarded from the standpoint of true social philosophy.

A final chapter is devoted to vicarious criminal liability, and here it would seem that Mr. Baty is fairly justified in the statement that "the law is in a state which it is not too much to call discreditable to English jurisprudence. Vicarious criminal liability is imposed haphazard and with an arbitrary hand."

W.

Il Fine dello Stato. By ALESSANDRO BONUCCI. (Athanaeum: Rome. Pp. 452.)

Among recent developments of significance to political science none is more noteworthy than the extraordinary productivity at the present time of Italian scholars. In the fields of international law, of consti-

tutional law, of administration, and of political theory, their work is extensive and of growing interest to the foreigner. If their science has for the most part been primarily German, it is nevertheless developing characteristics of its own which, it may be hoped, will lead to yet more important contributions to the political literature of the world.

The author of the present work on the ends of the state is professor of the philosophy of law at the University of Siena. His former works have dealt as much with pure philosophy and ethics as with jurisprudence, and the philosophical attitude dominates in the treatise now under review.

Asserting that in common opinion law is the principal, if not the exclusive, source of knowledge of the will of the state, the author shows that law is perfectly distinct from that will, much as effect is from cause. The will of the state is exerted upon its organs; the will of the state and the action of its organs together constitute the personality of the state. The will of the state finds expression in legal norms or rules; and these rules are evidenced by positive laws. The existence of legal rules must be considered as separated from their content. Both their existence and content are expressions of the will of the state directed to its organs. The will of the state expressing itself in law has thus two separable ends: an ideal end involved in the very existence of law, and an actual end determinable by reference to the rules embodied in an existing system.

The end of the state and the justification of the state are inseparable. It is by its ends, ideal and actual, that the state must be justified. Particular laws must be related to the actual end. Law in general is justified by the absolute duty and hence necessity of the state, as the most suitable instrumentality, to promote that personal liberty which is the highest aim of the individual.

ROBERT T. CRANE.

The American Year Book. A Record of Events and Progress. 1915. Edited by FRANCIS G. WICKWARE. (New York and London: D. Appleton and Company. 1916. Pp. xviii, 862.)

With this issue *The American Year Book* reaches its sixth volume. In general arrangement there is no departure from the previous issue. One slight change has added greatly to the convenience of those using the volume, that is, on the back of the cover the words "Record of the Year 1915" have been added, thus avoiding the confusion that other-

wise inevitably arises between the year of publication and the year covered by the contents. The present volume, like its predecessor, is divided into thirty-three sections or departments. While it covers such subjects as education, literature, art, archaeology, religion, anthropology, chemistry, physics, geology, mathematics, astronomy, and the medical sciences, over half of the volume is devoted to current history, political science, and economics. A larger amount of space than usual is devoted to the sections on American history, international relations, and foreign affairs, and probably nowhere else in the same compass can a student find as much valuable and accurate information in regard to the relation of the United States to the European war. This material, vast in extent, has been admirably digested and arranged for convenient reference.

C. G. F.

William Branch Giles: A Study in the Politics of Virginia and the Nation from 1790 to 1830. By DICE ROBINS ANDERSON. (Menasha, Wis.: George Banta Publishing Company, 1914. Pp. 271.)

Though not a statesman of the first order, Giles occupied a prominent place in the political arena of his day and generation. He was successively a member of the Virginia Assembly, of the national house of representatives, and of the United States senate, and after a period of retirement on account of ill health he closed his career as governor of Virginia and a member of the famous constitutional convention of 1829-1830. In the house of representatives he was majority leader under Jefferson and in the senate he was chairman of the foreign relations committee during the critical years preceding the War of 1812.

In politics he was a Republican, a friend and confidential adviser of Jefferson, and an enemy of Hamilton. He supported Madison for the presidency, and became leader of the administration forces in the senate, but as a friend of the Smiths he was hostile to Gallatin and opposed the appointment of Monroe as secretary of state. Thereafter he freely criticized the conduct of foreign affairs, and finally became an open advocate of war. With the death of John Taylor of Caroline and Judge Spencer Roane, Giles became the foremost advocate of strict construction and state rights, and one newspaper article after another came from his pen. He complained of the intolerable conditions imposed upon the South by the tariff, and pointed out that in

view of the vast amount of southern exports and the dependence of Europe upon southern cotton, secession might not be an inexpedient step for the South. Giles was a forceful speaker, a formidable debater, and a ready writer, but his style was vituperative and his point of view partisan. Professor Anderson has performed his task well and produced an interesting volume.

JOHN H. LATANÉ.

Abraham Lincoln: The Lawyer-Statesman. By JOHN T. RICHARDS. (Boston and New York: Houghton Mifflin Company. 1916. Pp. vii, 260.)

Few statesmen have faced such complicated and baffling problems as those which confronted Abraham Lincoln during the vexed years from 1860 to 1865. Few statesmen during such a period have met with so much hostile criticism, some justified, much unjustified. Even his own party failed to give him the united support that might reasonably have been expected, and the man who today is hailed with nearly universal praise was then the subject of abuse and even vilification. From his own party he often received half-hearted and grudging support; the Abolitionists, many of whom differed with him on methods and policies, criticized him bitterly; while the Democrats, realizing that he owed his election in 1860 to a split in their ranks, hailed him as a minority President, blamed him for most of the evils that had fallen upon the country, and poured out upon him the vials of their wrath. Indeed, so popular is the memory of Lincoln today that there is danger of the real Lincoln being obscured by the Lincoln of myth and hero-worship. There is danger that the difficulties of his administration, which were often increased by criticism and lack of united support, may seem small in light of the view of Lincoln which obtains generally today. Even the best of the biographies of Lincoln, the pretentious work of his secretaries, Nicolay and Hay, suffers from the fact that they were too close to their beloved chief to be entirely impartial and often saw the object of their friendship and youthful service out of perspective—Lincoln appearing too large and the other men who worked with him or who opposed him too small. The character and work of Abraham Lincoln still offer fruitful fields for historical investigations, and it is not unlikely that the true biography of the real Lincoln is yet to be written. Before such a work can be produced there are certain phases of Lincoln's private and political career that must be carefully investi-

gated and the results of such investigation presented in a clear and concise manner. The value of the work of Mr. Richards lies in the fact that it is work of this character.

The author, as he states in his preface, has no intention of writing a complete biography of Abraham Lincoln. His work is a presentation of the results of his investigations into "the record of Abraham Lincoln as a lawyer, his views upon the subjects of universal suffrage and the reconstruction of the Confederate state governments at the close of the Civil War, and his attitude toward the judiciary, upon which there has been considerable misunderstanding in recent years. To these there has been added a chapter devoted to some consideration of his standing as an orator."

By far the most important part of the book is the part dealing with Mr. Lincoln's legal career. The chapter entitled "In the Courts" contains a thorough discussion of Mr. Lincoln's legal practice and descriptions of the most important cases in which he appeared as an attorney-at-law. In an appendix the author has given in concise form the one hundred and seventy-five cases in the supreme court of Illinois in which Mr. Lincoln appeared as counsel. As this court was the only appellate tribunal and the court of last resort in the State of Illinois during the period of his professional activities, a study of these cases is essential to any fair judgment of Mr. Lincoln's legal ability and the scope and character of his practice. Here also are given the two cases in which Mr. Lincoln appeared before the bar of the supreme court of the United States. From the evidence thus presented Mr. Richards concludes that Mr. Lincoln was a capable lawyer of high standing, whose reputation as a lawyer was forgotten by the men of his day because it was soon "overshadowed by the greater labors and accomplishments of Abraham Lincoln, the profound statesman and the savior of his country." Here he takes issue with the view of Mr. Joseph H. Choate who held that Lincoln although a great President was not an accomplished lawyer. Mr. Richards believes that it was Mr. Lincoln's greatness as a lawyer that made him a great President, and that enabled him to grasp the paramount issue of the Civil War, namely, the preservation of the Union.

In clearly pointing out the attitude of President Lincoln toward the southern States during the Civil War, and his policy for the reconstruction of the State governments in them, Mr. Richards has done a good piece of work. He shows that President Lincoln "sought to aid and encourage those States to reestablish themselves as members of

the Union. He was never inclined to force negro suffrage upon them, but believed that the States should be left free to grant or withhold the right of suffrage as each State might determine for itself." Of the fact that Lincoln was opposed to the system, now known as "Carpet-Bag Government," he offers conclusive proof by well-chosen citations from Lincoln's writings.

Regarding the oft-repeated claim of the advocates of woman suffrage that Mr. Lincoln favored their cause, Mr. Richards finds only the well-known statement: "I go for all sharing the privileges of the government who assist in bearing the burdens. Consequently, I go for admitting all whites to the right of suffrage *who pay taxes or bear arms* (by no means excluding females)." As this statement was made when Lincoln was only twenty-seven years of age, and as it constitutes the only mention of votes for women by Mr. Lincoln, notwithstanding the fact that the Woman Suffrage Movement had reached considerable proportions by 1850, Mr. Richards concludes that there is not sufficient evidence to warrant the statement that Mr. Lincoln favored woman suffrage; nor is there evidence, on the other hand, to prove that he opposed it.

Lincoln's criticism of the decision of the supreme court of the United States, in the case of Dred Scott vs. Sanford, has been often referred to in recent years to justify assaults upon the courts, and as an argument for the recall of judicial decisions. Mr. Richards shows conclusively that a careful review of all that Mr. Lincoln said upon the subject shows that he was a "firm believer in and champion of the independence of the judiciary." He shows that the main criticism of the Dred Scott decision, made by Mr. Lincoln, is a criticism of the *obiter dicta*, in which he held that the majority of the justices had exceeded their authority and had undertaken to decide matters not properly before the court. There seems to be little in Mr. Lincoln's criticism of this case on which to base some of the attacks on our courts that claim to be justified by it.

On the whole, Mr. Richards' book is well written and will amply repay a careful reading. The last chapter adds little to our knowledge of Lincoln, and one regrets the fact that it was included, as it seems hardly up to the standard of the other chapters. The book is the result of careful study and investigation of records of the Illinois courts in which Mr. Lincoln practiced.

JAMES MILLER LEAKE.

City Planning: A series of papers presenting the essential elements of a city plan. Edited by JOHN NOLEN. (New York and London: D. Appleton and Company, 1916. Pp. xxvi, 447. National Municipal League Series.)

While the output of books, pamphlets, and periodical articles on city planning has been far from meager during these last few years, the greater number of these publications have been neither comprehensive in their scope nor practical in their suggestions. Mr. Nolen's volume possesses both of these qualities. In addition, it offers itself primarily as a handbook for the layman, for the conscientious citizen who would keep abreast of the times, and it hopes also to be of value to city-planning enthusiasts by its fund of varied and useful information. The book seems to live up to its purpose.

Seventeen experts contribute the eighteen chapters of the book, dealing with as many different phases of the general subject. There is a logical arrangement of topics, progressing from the introduction and a chapter on the general subdivision of land, through a consideration of each of the physical features which affect city life, such as streets, buildings, recreation facilities, water supply, transportation on water and land, rapid transit, and industrial and residential decentralization, to the details for the actual accomplishment of a city plan, the methods for setting to work and for financing it, with a concluding chapter on city-planning legislation in the United States and Canada. The more general chapters in the book are, perhaps, most interesting, as, for example, the introductory chapter by Mr. Frederick Law Olmsted, and those on "City Financing and City Planning" by Mr. Flavel Shurtleff and on "City Planning Legislation" by Prof. Charles Mulford Robinson. To those not familiar with city-planning methods Mr. George Burdett Ford's contribution on "Foundation Data for City Planning Work" is especially illuminating and suggestive. Some of the chapters on the more technical phases of the subject will possibly prove less clear to those readers who have not already become acquainted with the general principles and problems of city planning.

In general form the composite volume is excellent and sets a high standard for similar undertakings. To this several features contribute: the progress from one chapter to the next, with its different topic, is natural and easy; the transition from one author to another is not too noticeable; each subject receives to some extent the same general treatment;—in short, the editor's work has been cleverly and carefully done.

There is, possibly, too much attempt at interrelation in the matter of cross-references, etc.; these are skillfully arranged for the most part, but in some portions of the book they occur so frequently as to give an impression of artificiality. Ten pages containing a short biographical notice of each contributor precede the table of contents. There are many interesting illustrations and tables throughout the volume; but a few of these tables—for instance, those in the chapter on “Navigable Waters,” showing tonnage per unit of water and land surface and per unit length of wharf, and length of wharf per thousand population—appear to be of doubtful value in a book which makes its chief appeal to the general reader.

In a coöperative volume some repetition is hardly avoidable; yet three separate explanations of excess condemnation seem over many, besides giving opportunity for discrepancies in statement. A short list of references is appended to each chapter and a ten-page general bibliography concludes the volume. The book has been well printed and the proof reading is exemplary; there are practically no typographical errors save the page reference given in the foot-note on page 401.

A. M. H.

The Law and the Practice of Municipal Home Rule. By HOWARD LEE MCBAIN. (New York: Columbia University Press. Pp. xviii + 724.)

This generous volume represents by far the most complete and comprehensive study of municipal home rule in the United States that has yet appeared, and as such will be welcomed by all students of that interesting and important subject. The book is divided into two unequal parts. Part I, comprising about one-seventh of the book, is concerned with the origin and development of the home rule problem. It gives the history of the constitutional limitations on the power of state legislatures over cities, other than those involved in the grant of charter making powers to cities. This first and less important part of the work contains little that is new, but gives a concise and readable presentation of that phase of the subject.

The second part of the book takes up the situation in the twelve so-called “home-rule” States, that is, those in which cities have been granted the right by constitutional amendment to frame their own charters. The method of treatment is by States, taking each State

up in order and discussing the law and practice in that State. But the continuity of the treatment is preserved by numerous cross references in the text. The specific questions that have been raised in each of the States in suits involving an interpretation of the home rule powers are discussed in the light of the decisions. Naturally a great deal more space is devoted to the States which have had the home rule provisions longest in operation and in which consequently the largest number of cases have arisen. Hence more space is devoted to home rule in Missouri and California, than to all the ten other States combined.

The final chapter of the book contains some general conclusions drawn from the study of the experiences of the home rule States. It is put in the form of twelve specific questions with regard to the machinery and powers of home rule. This chapter should prove to have the most practical value of any in the book, for it makes concrete suggestions with regard to the fundamental problems involved in drafting home rule constitutional provisions. There is no question that within a decade municipal home rule provisions will be inserted in nearly all of the 36 state constitutions that do not now have them. In helping to avoid the legal and practical difficulties encountered in the States that already have these provisions this volume should prove of great service. As a careful and painstaking study of an important subject in public law it is a valuable contribution to the literature of the subject.

HERMAN G. JAMES.

A Model City Charter and Municipal Home Rule. As prepared by the Committee on Municipal Program of the National Municipal League. March 15, 1916.

The National Municipal League now lays before the public its "Model City Charter and Municipal Home Rule" prepared by a committee of distinguished experts in American city government. This document is a thorough revision of, or rather a substitute for, the League's original "Municipal Program," adopted more than fifteen years ago and it represents the mature judgment of that Association which has done such notable service in promoting thinking about city government in the United States. As such it will be gratefully received by students and publicists everywhere and it will doubtless be used as a guide by many a city engaged in charter revamping.

The scheme of government set forth in the document before us is simple in form. It is the commission manager type, supplemented by

the initiative, referendum and recall that is commended to the suffrages of American citizens; but there are some signs of misgivings on the part of the committee. Footnotes inform us that the sections on the initiative, referendum, and recall were adopted by "majority vote of the committee." Moreover, there is some uncertainty as to whether the commission manager plan is the last word in municipal revelation. The committee modestly suggests that it is "probably the most advanced and scientific form of municipal organization yet suggested." Proportional representation and preferential voting plans are placed in the form of appendices for those who seek guidance in such matters.

The League's program falls into two main parts: (a) home rule and (b) the structure and powers of the government. The first part shows that the committee has given thought to the most vital aspect of that thorny question, namely, the precise powers to be conferred upon the city by state constitutional amendment. The kind of a charter which a city may adopt under the committee's provisions is one "for its own government." That is, as we all know, a vague phrase, and one not worth quarrelling over. The powers which the city enjoying home rule are to have are those "relating to municipal affairs." That phrase also is a sort of omnibus measure for the home rule reformer; but the committee is quick to add that certain specific powers shall be granted, lest the blanket clause should smother the city which it covers. The specific powers conferred relate to taxation, local public services, local public improvements, education, and police and sanitary measures. Just what rights are granted by the supplementary bill of particulars only an encyclopaedic treatment, as Professor McBain has so abundantly demonstrated, could unfold. To the poor, distrusted state legislature—the people's tribunes—the League would leave merely the general authority to enact general laws relating to state affairs, applicable to all cities of the State alike.

As to the second part, namely the structure of government, the League places its faith in the small council elected for four years on a general ticket at large, subject to the recall. This council is to elect the city manager and stick to legislative business. Its motto is to be *ne sutor ultra crepidam*. "Except for the purpose of inquiry the council and its members shall deal with the administrative service solely through the city manager nor shall any member thereof give orders to any subordinates of the city manager, either publicly or privately. Any such dictation, prevention, orders, or other interference on the part of a member of council with the administration of the city shall be deemed

a misdemeanor." Surely this is depriving an alderman of his liberty without due process. One cannot help but admire the temerity of the committee and hope that its moral aspirations may be more than fulfilled. The Social Democratic member of the German city council could not get a job with the *bürgermeister* for his nephew before the Great War began, but it seems that even that chasm has been bridged by fraternal sacrifice. The initiative, referendum, and recall sections occupy ten pages of the program.

The League would put the administrative services of the city under the supreme direction of the city manager, for the mayor is to be a mere figure head—commissioned to open bazaars, review parades, receive Marathon runners, and render similar public services. The manager is to be appointed by the council for an indefinite term. He may be removed by the council. Why should he not be allowed to appeal over the heads of the council to the electors in case of a dead lock or a quarrel? Under the committee's scheme the manager is always up against the wall with a pistol at his head. Why not put the council up against the wall by allowing the city manager to dissolve it? The manager is to carry on the city's business with six department heads under his control and "in each case the man must have rendered active service in the same department in this or some other city." Evidently there are to be no women department heads in the League's scheme of things. This requirement of actual service as a prerequisite for departmental heads is an admirable idea, and it is to be hoped that the principle will be widely adopted and acted upon. We have too long been the victims of amateur administration.

The civil service provisions of the League's program are clear and full and represent, I believe, the most approved thought on that subject. The civil service board is to be appointed by the council. Many will doubtless dissent from this proposition, but the answer is that civil service commissioners must be appointed by some human authority. The sections on the budget are precise and apparently adequate. The committee has succeeded admirably in bringing this vague subject down to concrete legal statement. The division on public utilities embraces in analytical form the general principles which have already been enunciated by the League on other occasions. There is also to be a city planning board of an advisory character.

Adequate evaluation of the document before us would call for a treatise on municipal government and administration. Anyone who has studied the history of constitutions knows how fallible the human judg-

ment is. The best laid plans have sometimes gone wrong and the impossible have succeeded. It would be easy to pick out any number of the League's propositions and make some display of erudition gratifying to the author. There is nothing esoteric about the program. The proposals are for the most part clearly put and the language employed is far more precise and definite than one usually finds in city charters. The document is stripped of verbiage and compact in form. Some of the sections, such as those on the initiative and referendum might have been reduced, and more faith put in ordinances, but the good and wise will differ on this point. As a whole, the League's program will undoubtedly prove to be a new milestone in the history of American city government, recording many genuine achievements and telling of better things to come.

CHARLES A. BEARD.

English Public Health Administration. By B. G. BANNINGTON,
(London: P. S. King & Son. 1915. Pp. 338.)

The complicated system of public health regulations in vogue in England and the practical difficulties encountered by its administrators are well known to all students of hygiene who will welcome this volume of Bannington's as likely to throw some much needed light on the subject. As pointed out by the author, English sanitary law is largely a system of special acts designed to cover particular circumstances, beginning with the year 1774 when parliament passed an act to secure the health of prisoners. This was followed by acts regulating the health and morals of apprentices and mill operatives in 1802, "the first of a long series of factory acts." Under the influence of Chadwick and as a result of the public knowledge of the unsanitary conditions existing in England a general board of health was established in 1848. This board which seemed likely to systematize sanitary legislation survived only ten years, and in consequence special act has been added to special act until the duties and powers of sanitary officials are almost impossible to define. The great merit of English sanitarians lies in their ability to carry out sanitary reforms on the basis of this complicated legislation and the author gives us an excellent insight into the difficulties which beset the sanitarian and the way he avoids them. After an historical chapter of some 11 pages, 26 chapters are devoted to particular topics such as sources of powers, local legislative procedure, administrative organisation, etc. The duties of the medical officer of

health are well explained in Chapter VIII and those of the inspector of nuisances in Chapter IX and the friction encountered when two administrative officials with approximately equal powers occupy the same territory. Chapter XII dealing with the right of entry and Chapter XIX treating of sanitary authorities and the courts are especially valuable to the American student of public health. The great need of sweeping reforms in English sanitary law and administration is well recognized by the author, while the prediction is made by Graham Wallis of London University, who writes the introduction, that this reform is likely to date from August, 1914, which month, he says, marks the passing of an old epoch in Great Britain and the beginning of a new.

This publication of Bannington's, we feel sure, will prove of great assistance to all those desiring to understand English public health administration.

W. W. FORD.

Transportation Rates and their Regulation. By H. G. BROWN.
(New York: The Macmillan Company, 1916. Pp. 347.)

In the volume before us Professor Brown furnishes an interesting and extended study of a very large and difficult subject within the compass of some three hundred pages. The elements constituting the costs of transportation are discussed in detail and classified with especial reference to the effect of each on the question of rates. The study is one concerned with the determination of rates for American railroads, and the discussion of the elements involved and of the methods of solving this large and intricate problem is principally economic, although it is supplemented with legal theories and illustrated with actual cases.

The evils of discrimination in rates are restated and their unfair and undesirable consequences are set forth at length. Monopolies and protective tariffs are considered in this connection and comparisons are made which will hardly be acceptable to advocates of the doctrine of protection. For this reason and to this extent the illustrations and comparisons are unfortunate, as they challenge the reader's opinion on the debatable issues of the tariff and thus inject difficult political problems into the discussion of rates, which in itself is sufficiently involved and offers quite enough problems of its own.

The fundamental elements which constitute the costs of transporta-

tion and the competitive features of the problems incident to rate regulation are discussed with as much detail as the compass of the book permits, and these are illustrated with a sufficient number of cases to make it practical. The development of the theory of rate regulation of our railroads is described and the history and practical utility of the interstate commerce commission is set forth in an interesting manner while many leading decisions and rulings of the commission are discussed.

OSCAR L. POND.

Why War. By FREDERICK C. HOWE, Ph.D., LL.D., commissioner of immigration at the port of New York. (New York: Scribner's. 1916. Pp. xvi and 366.)

This work is perhaps sufficiently important to warrant its being noticed in a critical journal, but its character is not that of the writings which usually should be examined there. It is affected with such grave faults that the reviewer must speak with less appreciation than its merits would prompt him to do. Not always does it reveal the careful thinker or the well trained historical writer. The author's ideas are larger than his knowledge or his comprehension of historical relations and development. His penetration is less profound than his manner, his condemnation is too ready, his suspicions too certain, his solutions too easy and thorough. Moreover, in the technique of his reasoning and composition he mistakes assertiveness for force, positiveness for certainty, speculation for positive knowledge. These strictures are made with the uneasy feeling that often a reader or a critic in the seclusion of his study will discover such failings in the midst of attempts at constructive thinking and generous desire to make better the affairs of this world, efforts which in many instances the mere critic never could make himself; but nevertheless things are noted which have attracted attention along with excellent qualities which the book does possess. The writing is at times careless and bears evidence of haste in composition, though for the most part it is so clear and forceful that the reader will not wish to lay the book aside. It is not free from errors, but it also contains large ideas and vigorous thinking, which, in so far as they are correct, are valuable and striking. If this volume attains wide circulation, as conceivably it may, the less scholarly and careful will almost certainly be stimulated and impressed.

The author's thesis is that the powers of Europe, excepting France

and to some extent England, are ruled by the old feudal aristocracy, which exists in new form and allied with industry and finance, but which rules much as it did of old. The people do not control the government, and have little to say about peace and war, for foreign affairs are managed in secret by the aristocracy. And this aristocracy both rules and owns Europe, and has accumulated great riches which are invested in every lucrative field, especially in the munitions industry. Moreover their surplus wealth has gone forth to seek investment in all sorts of imperialistic enterprises overseas. Here may be found the chief source of modern wars—in the efforts of financiers to secure in backward countries or from weak peoples the placing of ruinous loans, monopolies, concessions, spheres of influence, and protectorates. As these mighty hunters prowl about the world in search of prey they meet at last, and then develop between nations, in a manner scarcely comprehensible to the mass of the people, differences irreconcilable and wars not to be avoided. Meanwhile armaments are increased and militarism perpetuated by the efforts of the ruling class, who alone cherish them, and are supported by indirect taxation which is thrust upon the poorer classes, themselves democratic and peaceful. The new era of this financial imperialism begins, according to the author, with the purchase by Disraeli of the Suez Canal shares in 1875, though the principle upon which it is founded may be traced back to Palmerston's action in the case of Don Pacifico about the middle of the century. The hope of betterment in the future lies in increasing the power of democracy, in public and democratic management of foreign affairs, nationalizing munition industries, withdrawing governmental support from the actions of financiers outside the boundaries of their country, proper adjustment of taxation, and the taking from feudal aristocracy its monopoly rights and exclusive privileges.

There is an interesting though not wholly accurate account of the present structure and character of the more important governments, with the character and condition of their peoples. The sordid methods of English enterprise in Egypt and of French penetration into Morocco are explained. A discussion of the value of colonies and of the actual profits of imperialism is admirable, as also the author's conception of the importance of control of the Mediterranean as one of the vital problems in European diplomacy. The gigantic plans dreamed of in carrying out German imperialism and in the construction of the Bagdad Railway are clearly understood and clearly set forth. Whatever the author says about taxation is worthy of attention and thought.*

In addition to a number of minor errors, which are scarcely worth recounting, the book abounds in what seem over-statements and half-truths. It is a mistake to say that the British house of lords was supreme in legislation up to 1910 (p. 16). The home rule question is no longer principally concerned with whether the Irish people or the non-resident landlords among the peers shall rule: certainly the opposition of Ulster arose largely from religious and industrial causes (p. 30). Secret diplomacy was questioned more than two centuries ago in England, and long ago in America (p. 57). Money economy was being substituted for barter and custom in some countries even before the period of the black death (p. 63). "Feudal" must be very loosely used when the author can affirm that England still retains the feudal system with respect to urban land (p. 65). It is scarcely proper to include the entire "Steel Trust" among the American munition interests in order to state that their combined capitalization is about two billions of dollars (p. 110). Certainly the English naval scare of 1909 was due to much more than the activities of Mr. Mulliner (p. 122). Some of the tables given do not necessarily prove what they are cited to sustain (p. 150). The date of the *Entente Cordiale* is not 1903 but 1904; nor was the Potsdam agreement made in 1911 but in 1910 (pp. 173, 206). I doubt whether in the years preceding the war, German industrial competition was any longer the nightmare to Englishmen which the author believes it to have been (p. 242). I do not think that imperialists sustain their plea by references to the fate of China or of Belgium (p. 276). It is not correct to assert that Charles II was permitted to collect excise duties on condition that he give up the land taxes paid by the great owners (p. 291). "Colossal" is used so repeatedly that it becomes wearisome and in the end unpleasant.

The book is dedicated to President Wilson, "whose sympathies for weaker nations and recognition of the rights of struggling peoples have shielded Mexico and China and saved us from the consequences of financial imperialism."

EDWARD RAYMOND TURNER.

Treaties, Their Making and Enforcement. By SAMUEL B. CRANDALL. Second edition. (Washington: John Byrne and Company. 1916. Pp. xxxii, 663.)

This book is a greatly enlarged and revised second edition of a doctoral dissertation originally published in 1904 in the *Columbia Uni-*

versity Studies in History, Economics and Public Law. The character of the work is essentially legal, not political or philosophical. Usually the author states the historical background of the rule under discussion, following it by an exposition of its development in diplomatic and judicial practice. He does not generally assume to sustain any particular thesis as to the nature of the treaty-making power in this or other countries, nor to combat any of the theories asserted in the diplomatic or judicial precedents which he outlines. The book, therefore, is synthetic rather than analytic and the practitioner in law or in departmental work readily finds himself at home amidst a thoroughly logical and scholarly manner of exposition without being drawn off into lengthy argument or critical discussion.

Part I treats of the history and practice of treaty-making and treaty-enforcement in the United States (pp. 19-272). Part II deals briefly with the treaty law of the principal foreign states *seriatim* (pp. 279-339). Part III deals with the operation of treaties as between independent sovereignties and the problems of the making, interpretation and termination of treaties in the extraterritorial relations of States (pp. 343-465). A valuable appendix tabulates in alphabetical order, according to countries, the most important decisions of the United States courts relating to treaties entered into between the United States and various countries, and gives extracts of the particular articles of the treaties involved in the cases (pp. 466-621).

The author does not lay preponderating emphasis upon the conflict between the treaty-making power and the reserved sovereignty of the States, although due consideration is given it. In discussing the effect of certain treaties of the United States upon prohibitions against inheritance by aliens contained in state legislation, the author inclines to an earlier view that the treaty operates "to change the status of the alien to that of the native as to the particular right of inheritance" (p. 251). Mr. Justice Field, in writing the opinion of the United States Supreme Court in the well known case of *Geofroy vs. Riggs*, did not adopt this theory, but stated boldly that the operation of the prohibitions contained in the state law must be deemed suspended by the treaty. Indeed, the earlier theory appears, at least to the present reviewer, to be a species of legal quibbling, designed chiefly to allay the susceptibilities of the extreme states' rights advocate. We have, it is true, become familiar with the theory of a divided status in respect of domicile, so that a person may be domiciled in one place for the purpose of determining his subjection to taxation, and in another for the purpose

of determining the succession to his personal estate. How far a similar disintegration of the status of nationality may occur is quite another question, and one would not be inclined to accept it without considerable misgiving.

The supreme court in recent years seems anxious to avoid the conflict wherever possible, through its power over the *interpretation* of treaties. In the case of *Rocca vs. Thompson* (1912) the provision in the treaty of 1853 with Argentina, providing that the consular representative of the nation to which the deceased belonged "shall have the right to intervene in the possession, administration and judicial liquidation of the estate of the deceased, conformably with the laws of the country, for the benefit of the creditors and legal heirs," is interpreted as giving no prior right of administration to the consul. In the opinion of the supreme court of Massachusetts and of a number of other State courts the term "right to intervene" is to be interpreted in the light of the foreign tongue from which it was taken and of the law prevailing at the time in the foreign country, instead of that of the narrower local technical definition and use of the word. The author has not critically discussed this decision of the federal court nor does the reviewer desire to do so at this time further than to say that its strictness of interpretation is in striking contrast to the more liberal standards adopted both by the supreme court and by the department of state where there is no conflict with state jurisdiction. Thus Secretary Hay, in dealing with the treaty of commerce of 1850 with Switzerland said: "Both justice and honor require that the common understanding of the high contracting parties at the time of the executing of the treaty should be carried into effect." Accordingly reciprocity in customs tariffs was conceded under a most-favored-nation clause, although contrary to the established practice of our government (p. 382).

The treaty power resides centrally or nowhere. Undoubtedly this phase of our treaty law is still in the making. The federal legislation suggested during the administration of President Taft has not been urged under that of his successor. The problem, however, is still open and must be solved. Indeed, it may some day become a crucial point in our diplomatic relations with foreign countries.

The author has done a solid piece of work and his book will be found useful and enlightening to all who seek a compact and yet complete exposition of our treaty law.

ARTHUR K. KUHN.

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST

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UNITED STATES

Aeronautics. First annual report of the National Advisory Committee for Aeronautics . . . March 3, 1915, to June 30, 1915. Senate document No. 268. 1916 303 p. 8°.

American Judiciary. An address delivered before the American Bar Association at Salt Lake City, Utah, on August 17, 1915 by Hon. Joseph W. Bailey former United States Senator from Texas. Senate doc. 428. 1916. 79 p. 8°.

——— **Duty of the courts to refuse to execute statutes in contravention of law.** Second report of the special committee . . . presented at the thirty-ninth annual meeting of the New York State Bar Association held in New York City on January 14 and 15, 1916. Senate doc. No. 454. 1916. 31 p. 8°.

Armies of France, Germany, Austria, Russia, England, Italy, Mexico and Japan, Strength and Organization of the, (showing conditions in July, 1914) 1916. 82 p. 8°. War Department, Office of the Chief of Staff, War College Division.

This document may be secured as War Dept. document No. 499, office of the Chief of Staff (2) or General Staff doc. No. 22. It is a revision of General Staff document No. 17. Price 10 cents per copy. Superintendent of Documents, Government Printing Office, Washington, D. C.

Army and the Press in War, The proper relationship between the. War Dept. doc. 528. 1916. 13 p. 8°. *War Department, War College.*

Army Appropriation Bill, 1917 Hearings before the Committee on Military Affairs House of Representatives . . . 1916. 972 p. 8°.

Army of the United States, Cost of the, as compared with the cost of the armies of other nations, Study on the. War Dept. doc. 507. *War Department, War College.*

Army Organization. Changes in organization found necessary during progress of the European War. War Dept. doc. 506. 1916. 28 p. 8°. *War Department, War College.*

——— 1. Organization, training, and mobilization of a force of citizen soldiery.
2. Method of training a citizen army on the outbreak of war to insure its preparedness for field service. War Dept. doc. 521. 1916. 20 p. 8°. *War Department, War College.*

Army Reorganization Bill, Analysis of the. Letter from the Secretary of War to the chairman of the Senate Committee on Military Affairs transmitting memorandum of analysis of the army reorganization bill, and comparison with pro-

visions of the bill drafted by the General Staff for reorganizing the army. Senate doc. No. 447. 1916. 17 p. 8°. *Senate Committee on Military Affairs.*

Aviation School and Training Grounds for the Signal Corps of the United Army, Letter from the acting Secretary of War transmitting report of commission of Army Officers . . . upon advisability of the acquirement by the . . . government of land near the Bay of San Diego, Cal., and elsewhere on the Pacific, Gulf and Atlantic coasts, for an. House doc. 687. 1916. 87 p. 8°.

The bulk of this report consists of maps prepared by the Weather Bureau, illustrating average climatic conditions in the regions in question.

Aviation Service, United States Army, Investigation of the . . . Report (to accompany S. J. Res. 65.) Senate report No. 153. [1916.] 4 p. 8°. *Senate, Committee on Military Affairs.*

Bankruptcy Laws of the United States. Revision of the act of July 1, 1898; act of February 5, 1903; act of June 15, 1906, and act of June 25, 1910. Uniform system, with marginal notes and index and general orders and forms in bankruptcy adopted by the Supreme Court of the United States together with court decisions on the various sections . . . House doc. 1106. 1916. 106 p. square 4°. *House of Representatives, committee on revision of the laws.*

Brandeis, Louis D. Hearings before the subcommittee of the committee on the Judiciary, United States Senate, on the nomination of Louis D. Brandeis to be an associate justice of the Supreme Court of the United States together with the report of the sub-committee . . . thereon. In two volumes. Senate doc. 409. Vol. 1, [Hearings] 1916. 1319 p. 8° Vol. 2, [Report] 125 p. 8°.

Vol. 1 has been previously printed without document number and described in the February issue of the REVIEW.

Campaign Contributions and Expenditures, Publicity of. Report [to accompany H. R. 15842.] House report no. 765. [1916.] 6 p. 8°. *House of Representatives, Committee on Election of President, Vice-President, and Representatives in Congress.*

Central America as an Export Field, by Garrard Harris, Special Agent and various American Consular Officers. Special Agent Series, No. 113. 1916. 229 p. 8°. *Department of Commerce, Bureau of Foreign and Domestic Commerce.*

Child-Labor Bill. Hearings before the Committee on Labor. House of Representatives on H. R. 8234 a bill to prevent interstate commerce in the products of child labor, and for other purposes. 1916. 317 p. 8°.

Child Labor, To Prevent Interstate Commerce in the Products of, Senate report [to accompany H. R. 8234] [1916.] 23 p. 8°. *Senate, Committee on Interstate Commerce.*

Collective Bargaining in the Anthracite Coal Industry. Bulletin 191. 1916. 171 p. 8°. *Department of Labor, Bureau of Labor Statistics.*

Compensation of Government Employees suffering injuries while on duty. Report [to accompany H. R. 15316.] House report 678. [1916.] 14 p. 8°. *Committee on the Judiciary.*

District of Columbia, Election of Delegate from the. Report [to accompany S. 681.] Senate report 443. [1916.] 7 p. 8°. *Committee on the District of Columbia.*

— Hearings . . . Subcommittee of the Committee of the District of Columbia, United States Senate . . . on Representation of the District of Columbia in Congress. S. J. Res. 32 . . . proposing an amendment to the constitution . . . extending the right of suffrage to residents of the District of Columbia. 1916. 98 p. 8°.

Finances and Costs of the Present European War. War Dept. doc. 512. 1916. 11 p. 8°. *War Department, War College.*

Forces of Belligerent Nations of Europe, Training of. War Dept. doc. 534. 1916. 14 p. 8°. *War Department, War College.*

Foreign Commerce and the Tariff 1899-1915. Letter from the Secretary of Commerce transmitting in response to a Senate resolution of January 17, 1916, information regarding the value of imports, exports, and import duties under the two preceding tariff acts; the value of imports compared with domestic production, and the expenditure for wages in each industry before the outbreak of the European war; and the imports and exports of leading manufacturing countries during recent years. Senate document no. 366. 1916. 75 p. 8°.

German Government, Relations with the. Address of the President . . . delivered at a joint session of the two houses of congress, April 19, 1916. House doc. no. 1034. 1916. 6 p. 8°.

— Status of armed merchant vessels. Memorandum of the department of State showing the views of the government of the United States in regard to the status of armed merchant vessels in neutral ports and on the high seas. Senate doc. 420. 1916. 7 p. 8°.

— Torpedoing of the S. S. Sussex, Papers relating to the. 1916. 66 p. fol. *Department of State.*

— Vessels sunk by German submarines, mines, or warships. Data concerning the sinking of neutral vessels belonging to Norway, Sweden, Denmark, and Holland and which were sunk . . . between the dates, August 1, 1914, and March 25, 1916. Senate document no. 381. 1916. 6 p. 8°.

Government Employees. Method of directing the work of . . . Report [to accompany H. R. 8665]. House Report 698. [1916.] 47 p. 8°. *House of Representatives, Committee on Labor.*

Note: Majority report recommends the passage of H. R. 8665, which prohibits the use of the "Stop-watch Method" in government departments.

Index, Digest of the Act of October 15, 1914. (Clayton Act) and of the act approved May 15, 1916 (Kern Amendment). Senate doc. no. 355. 1916. 294 p. 8°.

Interstate Commerce Commission, Enlargement of. Report [to accompany H. R. 308]. Senate report 437. [1916.] 15 p. 8°. *Committee on Interstate Commerce.*

Lincoln, Homestead of. Speeches in the House of Representatives, April 5, 12, 1916 on a bill to accept a deed of conveyance from the Lincoln Farm Association to the United States of the homestead of Abraham Lincoln, near the town of Hodgenville, State of Kentucky. House doc. 1056. 1916. 108 p. 8°.

Mexico. Note of the Secretary of State . . . to the Secretary of Foreign Relations of the de facto government of Mexico, dated June 20, 1916. House doc. 1237. 1916. 20 p. 8°.

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST 615

Military Establishment of the United States, Hearings before the committee on Military Affairs, House of Representatives . . . on the bill to increase the efficiency of the. Jan. 6 to Feb. 11, 1916. 2 v. 1-736, 737-1514 p. 8°.

Military Establishment of the United States, To increase the efficiency of the . . . Conference Report [to accompany H. R. 12766]. House report no. 695. 62 p. 8°.

The same is also printed as Senate doc. no. 442, omitting statement of House Managers. 60 p. 8°.

Military Law and Efficient Citizen Army of the Swiss . . . Senate document no. 360. 1916. 79 p. 8°.

Contains descriptions of the Swiss Military System from various sources.

Military Policy of the United States, by Bvt. Maj. Gen. Emory Upton, United States Army—Fourth impression Senate doc. 379. 1916. 495 p. 8°.

Military Training in Public Schools of the United States, Outline of plan for, War Dept. doc. 524. 1916. 9 p. 8°. *War Department, War College.*

Militia, The, as organized under the constitution and its value to the nation as a military asset. War Dept. doc. 516. 1916. 12 p. 8°. *War Department, War College.*

Minimum Wage Bill. Report from the House Committee on Labor [to accompany H. R. 11876]. House report 742. [1916.] 17 p. 8°.

Note: H. R. 11876, the so-called "Nolan Bill," provides for a minimum wage of three dollars for government employees. Report recommended passage of bill as amended.

Mobilization of Industries and Utilization of the commercial and Industrial resources of the country for war purposes in emergency. War Dept. doc. 517. 1916. 12 p. 8°. *War Department, War College.*

Mortality Tables. United States Life Tables 1910 prepared under the supervision of Prof. James W. Glover of the University of Michigan. 1916. 65 p. *Department of Commerce, Bureau of the Census.*

Motion-Picture Commission. . . . Report [to accompany H. R. 15462]. House report 697. [1916.] 5 p. 8°. *House of Representatives, Committee on Education.*

Report favorable to passage of bill creating a Federal commission for the regulation of and approval of pictures to be publicly exhibited.

——— **Minority Views** [to accompany H. R. 15462]. House Rept. 697, pt. 2. [1916.] 5 p. 8°.

National Employment Bureau. [Report, from House Committee on Labor to accompany H. R. 5783.] House Report no. 424. [1916.] 12 p. 8°.

H. R. 5783 proposes the establishment of a national employment bureau in the Department of Labor. Report is favorable to passage of the bill.

Navy, Preparedness of the. Letter from the Secretary of the Navy transmitting . . . communication from Rear Admiral Bradley A. Fiske, relative to bringing the navy to a state of preparedness . . . Senate doc. no. 413. [1916.] 6 p. 8°.

Pan-American Scientific Congress, Second. Final act and interpretative commentary thereon prepared by James Brown Scott . . . reporter general of

the congress, delegate on the part of the United States of America . . . 1916. 516 p. 8°.

Philippine Islands, Political Status of the. Report [to accompany S. 381]. House report 499. [1916.] 18 p. 8°. *House of Representatives, Committee on Insular Affairs.*

Pipe-Line Transportation of Petroleum. Letter of submittal and summary and conclusions of the report of the Federal Trade Commission on . . . 1916. 17 p. 8°.

Porto Rico, A Civil Government for. Hearings before the Committee on Insular Affairs, House of Representatives . . . on H. R. 8501 . . . 1916. 112 p. 8°.

Price of Gasoline, Investigation of the. Letter from the Chairman of the Federal Trade Commission transmitting a preliminary report relative to an investigation of gasoline prices by the Commission. Senate doc. 403. 1916. 15 p. 8°.

Rural Credits, and land registration, laws relating to. Uniform state laws relating to same . . . Senate document no. 351. 1916. 43 p. 8°.

Rural Credits. Report from House Committee on Banking and Currency [to accompany H. R. 15004]. House report 630. [1916.] 30 p. 8°.

Shipping Board, A, a naval auxiliary, a merchant marine, and regulative carriers by water engaged in the foreign interstate commerce of the United States. Report House Committee on the Merchant Marine and Fisheries (to accompany H. R. 15455). House rept. 659. [1916] 74 p. 8°.

——— **Minority views** . . . House rept. 659, pt. 2. [1916.] 7 p. 8°.

Social Insurance and Unemployment. Commission to study. Hearings before the Committee on Labor, House of Representatives . . . on H. J. Res. 159, a resolution for the appointment of a commission to prepare and recommend a plan for the establishment of a national insurance fund and for the mitigation of the evil of unemployment. . . . 1916. 306 p. 8°.

Statistical Abstract of the United States, 1915. Thirty-eighth number. 1916. 749 p. 8°. *Department of Commerce, Bureau of Foreign and Domestic Commerce.*

War Department, Organization and Administration of the, adapted to a change from peace conditions to a state of war. War Dept. doc. 520. 1916. 28 p. 8°. *War Department, War College.*

Woman Suffrage. Argument submitted by the National Anti-suffrage Association in opposition to the adoption of the so-called Susan B. Anthony proposed amendment to the Constitution of the United States . . . Senate doc. no. 408. 1916. 27 p. 8°.

ALABAMA

Alabama Official and Statistical Register, 1915 . . . 1915. 512 p. 8°. *Department of Archives and History.*

CALIFORNIA

California Laws of interest to women and children. Supplement, 1913-15. . . . 1916. 96 p. 16°. *State Library.*

Social Insurance in California. Brief survey of field investigation now under way through Commission appointed by . . . Governor Hiram W. Johnson. 8p. 8°. *Social Insurance Commission.*

ILLINOIS

Vice Committee created under the authority of the Senate of the forty-ninth General Assembly as a continuation of the committee created under the authority of the Senate of the forty-eighth General Assembly, Report of the, . . . 1916. 982 p. 8°.

KENTUCKY

Kentucky Directory for the use of courts, State and county officials and General Assembly of the State . . . By Frank K. Kavanaugh. 1916. 279 p. 16°.

MARYLAND

Public Education in Maryland. A report to the Maryland Educational Survey Commission. By Abraham Flexner and Frank P. Bachman. 1916. 176 p. 12°. *Educational Survey Commission.*

MASSACHUSETTS

Special Commission on Taxation. Appointed under chapter 134, resolves of 1915. Report of the, 1916. 126 p. 8°.

NEW YORK

Constitutional Convention of the State of New York, 1915 . . . Documents of the [Nos. 1-54]. Various paging (about 500 p.) 8°.

Constitutional Convention . . . 1915 . . . Journal of, 1915. 1018 p. 8°.

Manual for the use of the Legislature of the State of New York, 1916. . . . 1915. 1195 p. 16°. *Secretary of State.*

NORTH CAROLINA

Law Reform and Procedure, Tentative report of the commission on. [1916.] 14 p. 8°.

OHIO

The Election Laws of the State of Ohio and of the United States of America applicable to the conduct of elections and the duties of officers in connection therewith . . . 1915. 317 p. 8°. *Secretary of State.*

PENNSYLVANIA

Constitutions of Pennsylvania, Constitution of the United States. Analytically indexed and with index of legislation prohibited in Pennsylvania . . . 1916. 302 p. 8°. *Legislative Reference Bureau.*

PHILIPPINE ISLANDS

La Independencia como aspiración nacional. Resoluciones y declaraciones de la Asamblea Filipina, de la Legislatura Filipina y del Speaker Osmeña sobre la independencia de Filipinas, durante la primera, segunda y tercera Legislaturas Junis 19, 1908-Febrero 4, 1916. Manila, 1916. 80 p. 8°. *Legislatura.*

SOUTH DAKOTA

Third Census of the State of South Dakota . . . 1915. [1916.] 1168 p. 8°. *Department of History.*

TEXAS

The Legislative Reference Bureau as a bill revising agency, by J. F. Marron, legislative reference librarian, Texas State Library . . . prepared for the conference on bill drafting at Washington, Dec. 31, 1915. 1916. [10] p. 24°. *State Library.*

Reprinted from *Special Libraries*, March, 1916.

VIRGINIA

Liquor Laws of Virginia. Including also federal laws relating to interstate shipments . . . 1916. 80 p. 8°. *Attorney General.*

WEST VIRGINIA

West Virginia Legislative Handbook and manual and official register, 1916. . . . 1916. 804 p. 8°. *Clerk of the Senate.*

WYOMING

Official Directory of Wyoming, 1916. . . . 48 p. 24°. *Secretary of State.*

AUSTRALIA

Census of the Commonwealth of Australia . . . 1911. Vol. 2, pts 1-8. Vol. 3, pt. 9-14. 1073, 1074-2296 p. fol. *Census Bureau, Dept of State for Home Affairs.*

NEW SOUTH WALES

Official Year Book of New South Wales 1914. . . . 1915. 1010 p. 8°. *Bureau of Statistics.*

BELGIUM

Guerre De 1914-1916. Réponse au Livre Blanc Allemand du 10 Mai 1915 "Die Völkerrechtsniedrige Führung des Belgischen Volkskriegs." Paris 1916. 517 p. fol. *Ministère de la Justice et Ministère des Affaires Étrangères.*

CANADA

Employment for Members of the Canadian Expeditionary Force on their return to Canada and the re-education of those who are unable to follow their previous occupations because of disability, The provision of. A plan submitted by the Secretary of the Military Hospitals and Convalescent Homes Commission together with appendices dealing with similar work in England and the continent of Europe. Ottawa. 1915. 53 p. 8°.

Russian Trade, Reprint of articles dealing with. Preliminary report by Mr.

C. F. Just, Canadian Special Trade Commissioner. (Supplement to weekly Bulletin of the Department of Trade and Commerce.) 1916. 97 p. 8°.

" . . . reproduction in a form convenient for reference of the various contributions on the subject of Russian trade which have appeared from time to time in the Weekly Bulletin."

CHINA

The "People's Will," an exposure of the political intrigues at Peking against the Republic of China. By authority of the Republican Government of China. . . . 1916. 29. [24] p. 8°.

GREAT BRITAIN

Aircraft Insurance Committee, Report of the. [Cd. 7997.] 1915. 12 p. fol. Price 1½ d. *Board of Trade*.

Committee appointed "to consider . . . whether a scheme can be devised to cover loss and damage by bombardment and air-craft" . . .

Contraband of War, List of articles declared to be. Miscellaneous No. 12 (1916). [Cd. 8226.] 1916. 3 p. fol. Price ½d. *Foreign Office*.

Defence of the Realm (liquor control) regulations, 1915. Second report of the Central Control Board (Liquor Traffic) appointed under the defence of the realm (amendment) (no. 3) Act. 1915. 1916. 36 p. fol. [Cd. 823.] 3½d.

Defence of the Realm Regulations made to Feb. 15, 1916. Reproduced in consolidated form as provided by order in council with notes edited by Alexander Pulling, C. B., . . . 1916. 45 p. 8°. Price 6d. *Privy Council*.

Employment of Women on munitions of war with an appendix on training of munition workers. Notes on the. 1916. 94 p. 4°. Illus. *Ministry of Munitions*.

Examination of Parcels and Letter Mails. Memorandum presented by His Majesty's government and the French government to neutral governments regarding the. [Cd. 8223.] 1916. 7 p. fol. Price 1d. *Foreign Office*.

Merchants Shipping (Casualties). Return "Showing the number and net tonnage of British merchant ships and fishing vessels reported to the Board of Trade as totally lost between the 4th day of August, 1914, and the 31st day of October, 1915, by enemy action and ordinary marine casualties." H. of C. paper 430. 1916. 1 p. fol. Price ½d.

Naval and Military Despatches relating to operations in the war. Pt. 4. Despatch, dated 11th December, 1915, from General Sir Ian Hamilton, G.C.B., describing the operations in the Gallipoli Peninsula, including the landing at Sulva Bay, 1916. 48 p. 8°. Price 2d. *War Dept.*

Rights of Belligerents. Further correspondence between His Majesty's Government and the United States Government, respecting the. [In continuation of Miscellaneous no. 14 (1916). [Cd. 8233]. Miscellaneous no. 15 (1916). [Cd. 8234]. 1916. 19 p. fol. Price 3d. *Foreign Office*.

Settlement or employment on the land in England and Wales of discharged sailors and soldiers; Introduction and part I of the final report of the departmental committee appointed by the President of the Board of Agriculture and Fisheries to consider the. [Cd. 8182.] 1916. 30 p. fol. Price 6d.

War Charges incurred up to the 31st day of March, 1915; (2) how these charges have been met; and (3) how the money borrowed has been raised. Return showing (1) the estimated amount of. H. of C. paper 323. 1915. 1 p. fol. Price $\frac{1}{2}$ d. *Treasury Chambers.*

NETHERLANDS

De Arbeid van Vrouwen en Meisjes in Het Winkelbedrijf, Benevens eenige mededeelingen omtrent dit laatste . . . 's—Gravenhage—1915. 80 p. 4°. *Directie van den Arbeid.*

NEW ZEALAND

The New Zealand Official Year Book, 1915 . . . Wellington, N. Z. 1915. 1004 p. 8°. *Statist.*

NORWAY

Arbeidsledighet og Arbeidsledighetsforsikring . . . Tillaegshefte til sociale meddelelser 1915. Kristiana, 1915. 102 p. 8°. *Departementet for Sociale, Handel. Industri og Fiskeri*

SWITZERLAND

Statistisches Jahrbuch der Schweiz . . . 1914 . . . 1915. 314 p. 8°. *Statistisches Bureau. Finanz departement.*

UNION OF SOUTH AFRICA

War Stores Commission, Report of, 1916. 77 p. fol. *Parliament.*

Commission appointed "to inquire into and report upon alleged irregularities in connection with Government contracts and purchases entered into and effect since the beginning of August, 1914. for the *Department of Defence.*"

INDEX TO RECENT LITERATURE—BOOKS AND PERIODICALS

CONSTITUTIONAL LAW AND ADMINISTRATION

Books

Abignento, Giovanni. La riforma dell'amministrazione pubblica in Italia. Bari: G. Laterza e figli. Pp. xvi-370.

Alexander, De Alva Stanwood. History and procedure of the house of representatives. Boston: Houghton, Mifflin Company.

Antonio, Cappellini. La provincia: legislazione, note e commenti. Firenze: Biblioteca di Legislazione amministrativa.

Bacon, Charles W. and Morse, Franklin S. The American plan of government. New York. G. P. Putnam's Sons. Pp. 474.

Barthélemy, Joseph. Les institutions politiques de l'Allemagne contemporaine. Paris: Felix Alcan. Pp. 275.

Berthélemy, H. Traité élémentaire de droit administratif. 8° ed. Paris: Rousseau et Cie.

Bishop, Joseph Bucklin. Presidential nominations and elections. New York: Charles Scribner's Sons.

Elliott, Edward. American government and majority rule. Oxford Univ. Press.

Flaudin, E. Institutions politiques de l'Europe contemporaine, t. v: l'Espagne. Paris: Le Soudier. Pp. vii-368.

Fowler, Jr., Nathaniel C. The principle of suffrage. New York: Sully and Kleinteich Co.

Goodnow, Frank J. Principles of constitutional government. Harper and Brothers.

Haynes, Fred. E. Third party movements since the Civil War. Iowa City: Pub. by Iowa State Hist. Soc.

Hill, John Philip. The federal executive. Boston: Houghton, Mifflin Co. Pp. 269.

Jèze, Gaston. Les principes généraux du droit administratif, 2e éd. Paris: Giard et Brière. Pp. xlviii-543.

Jiménez de Arechaga, J.-E. El voto de la mujer. Su inconstitucionalidad. Montevideo: Peña. Pp. 74.

Jiménez de Aréchaga, J.-E. Sobre inaplicabilidad de leyes inconstitucionales. Montevideo: Mariño. Pp. 110.

Lapradelle, A. de. Court de droit constitutionnel. Paris: A. Pedone. Pp. 592.

Rogers, Lindsay.* The postal power of Congress. Baltimore: Johns Hopkins Univ. Press.

Sellars, R. W. The next step in democracy. New York: The Macmillan Co.
Stevens, David Harrison. Party politics and English journalism. Menasha, Wis.: The Collegiate Press. Pp. 156.

Taft, William Howard. The Presidency. New York: Charles Scribner's Sons.
Taft, William Howard. Our chief magistrate and his powers. New York: Columbia Univ. Press.

Wesselitsky, G. De. Russia and Democracy. New York: Duffield & Co.

Articles

Administrative Commissions. Judicial determinations by administrative commissions. *Charles W. Needham.* Am. Pol. Sci. Rev. May, 1916.

Administrative Law. The development of administrative law in the United States. *Edward A. Harriman.* Yale Law Jour. June, 1916.

Aliens. Need of federal legislation in respect to mob violence in cases of lynching of aliens. *Charles H. Watson.* Yale Law Jour. May, 1916.

Austria. Das ständisch-monarchische staatsrecht und die österreichische gesamt-oder länderstaatsidee. *Friedrich Tezner.* Zeits. für. Priv. und Öffent. Recht. XLII, 1, 2. 1916.

——— Der österreichische staatsgedanke und das deutsche volk. *Robert Sieger.* Zeits für Pol. IX, 1, 2. 1916.

——— Die natur des österreichischen postrechts. *Köstler.* Zeits für Priv. und Öffent. Recht. XLII, 1, 2. 1916.

Austria-Hungary. Österreichs und Ungarns zollgemeinschaft. *Eugen von Philippovich.* Zeits. für Pol. IX, 1, 2. 1916.

British Empire. The reorganization of the empire. *B. R. Wise and Sidney Low.* Nine. Cent. April, 1916.

Censor. Le régime de la presse in Angleterre pendant la guerre. *Gaston Jéze.* Rev. du Droit Pub. et de la Sci. Pol., XXXIII, No. 1. 1916.

Central Europe. Deutschland und Österreich-Ungarn. *Ottocar Weber.* Zeits. für Pol. IX, 1, 2. 1916.

China. Public opinion and political parties in China. *Y. K. Leong.* Contemp. Rev. May, 1916.

Immigration. Administrative decisions in connection with immigration. *Louis F. Post.* Am. Pol. Sci. Rev. May, 1916.

Impeachment. Federal impeachments. *Alex. Simpson, Jr.* Penn. Law Rev. May, 1916.

Income Tax. The constitutionality of the graduated income tax law. *Frank W. Hackett.* Yale Law Jour. April, 1916.

Interior Department. The board of appeals, the department of the interior. *Edward C. Finney.* Am. Pol. Sci. Rev. May, 1916.

Interstate Commerce. Congressional prohibitions of interstate commerce. *Thomas S. Parkinson.* Columbia Law Rev. May, 1916.

Interstate Commerce Commission. The power of the Interstate Commerce Commission to award damages. *Robert V. Fletcher.* Yale Law Jour. April, 1916.

Justice of the Peace. Justices of the peace; the origin of their office. *A. J. McGillivray.* Am. Law Rev. L, No. 2. 1916.

Justice Holmes. The constitutional opinions of Justice Holmes. *Felix Frankfurter*. Harv. Law Rev. April, 1916.

Land Department. "Government contests" before the administrative tribunals of the land department. *Philip P. Wells*. Amer. Pol. Sci. Rev. May, 1916.

—— The land department as an administrative tribunal. *Charles R. Pierce*. Am. Pol. Sci. Rev. May, 1916.

Law. Les lois rétroactives. *Gaston Jèze*. Rev. du Droit Pub. et de la Sci. Pol. XXXe No. 1. 1916.

Law of Nature. The law of nature in state and federal judicial decisions. *Charles Grove Haines*. Yale Law Jour. June, 1916.

Militarism. Compulsory military service in England. *F. J. C. Hearnshaw*. Quart. Rev. April, 1916.

Ontario. Divisional court law in Ontario. *Canada Law Rev.* May, 1916.

Philippines. The status of the Philippines. *George A. Malcolm*. Mich. Law Rev. May, 1916.

Police Power. The scope and meaning of police power. *Charles Bufford*. Cal. Law Rev. May, 1916.

Porto Rico. The relations between the United States and Porto Rico, II. *Pedro Capó-Rodríguez*. Am. Jour. of Int. Law. Jan., 1916.

President. The powers of the President over foreign affairs. *Allen Welsh Dulles*. Mich. Law Rev. April, 1916.

Representation. Proportional representation: a fundamental or a fad? *Herman G. James*. Nat'l Mun. Rev. April, 1916.

Scotland. Thoughts on the parliament of Scotland. *A. V. Dicey*. Quart. Rev. April, 1916.

Separation of Powers. The boundaries between the executive, the legislative and the judicial branches of the government. *William Howard Taft*. Yale Law Jour. June, 1916.

Suffrage. Women's rights in male-suffrage states. *Epaphroditus Peck*. Yale Law Jour. April, 1916.

Tariff. The tariff commission plan. *James B. Reynolds*. N. Am. Rev. June, 1916.

United States Constitution. Agreement in the Federal Convention. *R. L. Schuyler*. Pol. Sci. Quart. June, 1916.

Workmen's Compensation Act. State workmen's compensation acts and the federal employers' liability act. *James Harrington Boyd*. Yale Law Jour. May, 1916.

INTERNATIONAL RELATIONS

Books

Abbott, James Francis. Japanese expansion and American policies. Macmillan.

Aldo, Baldassarri. De fondamento della estradizione. Rome: Loescher.

Alvarez, Alejandro. La grande guerre européenne et la neutralité du Chili. Paris: Pedone. Pp. 302.

Andler, Ch. Les usages de la guerre et la doctrine de l'état—major allemand. Paris: Alcan. Pp. 119.

- Baer, Albert.* Der Weltkrieg. Berlin, J. Guttentag. Pp. 52.
- Bissing, Fr. Wilh.* Belgien unter deutscher verwaltung. München, Sud-deutsche Monatshefte, 1915. M. Pp. 60.
- Böhtlingk, Arthur.* Die völker und das meer im lauf der jahrtausende. Berlin: Puttkammer & Mühlbrecht. Pp. 56.
- Borchard, E. M.* The diplomatic protection of citizens abroad. New York: The Banks Law Pub. Co.
- Carlés, Manuel et Wilmart, R.* La république Argentine et la guerre européenne. Paris: Coneslant. Pp. 32.
- Carlino, P.* Genesi e fondamento delle imminutá diplomatiche. Rome: Athenaeum.
- Denis, E.* La guerre, causes immédiates et lointaines, le traité. Paris: Delegrave. Pp. XII-356.
- Deutschland u. d. Mittelmeer. Sechs abhandlgn. München-Gladbach: Volksvereins-Verlag. Pp. 110.
- Dickinson, G. Lowes.* The European anarchy. New York: The Macmillan Co.
- Dunlap, D. N.* British destiny. London: Path Pub. Co.
- Dupuis, Charles.* L'Avenir du droit international. Paris: Alcan. Pp. 23.
- Fidel, E.* L'Allemagne d'outre-mer; grandeur et décadence. Paris: Boivin. Pp. 79.
- Fish, Carl Russell.* American diplomacy. New York: Henry Holt & Co.
- Gomperz, H.* Philosophie des krieges in umrissen. Gotha: F. A. Perther. Pp. xvi-252.
- Grasshoff, Rich.* La Belgique coupable. Berlin: G. Reimer. Pp. III-99.
- Grotius, H.* The freedom of the seas. Ed. by R. Van D. Magoffin. New York: Oxford Univ. Press.
- Haidegger, Wendelin.* Der europäische krieg. Innsbruck: Vereinsbuchhandlung. Pp. xxiv-346.
- Harms, Bernh.* Deutschlands anteil an welthandel u. weltschiffahrt. Stuttgart: Union. Pp. 215.
- Herre, Paul.* Weltpolitik u. weltkatastrophe 1890-1915. Berlin: Ullstein & Co. Pp. 271.
- Hovelacque, E.* Les causes profondes de la guerre. (Allemagne, Angleterre). Paris: Alcan. Pp. viii-120.
- Howe, Frederick C.* Why War. New York: Charles Scribner's Sons.
- Hyde, H. E.* The two roads, international government or militarism. London: R. S. King. Pp. xii-155.
- Johnson, Willis Fletcher.* America's foreign relations. 2 vols. New York: The Century Co.
- Juge, Stéphane.* Dernière guerre en Europe. La paix de 1916. Paris. Henri Delesques. Pp. ix-195.
- Labberton, J. H.* Belgium and Germany. Chicago: Open Court Publ. Co.
- Ladd, W.* An essay on a Congress of Nations. Reprint by J. B. Scott. New York: Oxford Univ. Press.
- Lesage, C.* La rivalité anglo-germanique: les câbles sousmarins allemands. Paris: Plon-Nourrit. Pp. xx-275.
- Macdonald, J. A., Murray.* European international relations.* London: Unwin. Pp. 144.

MacLagan, Q. F. Mutual defence of nations. London: Garden City Press. Pp. 200.

Masaryk, T. G. The problem of small nations in the European crisis. London: Council for Study of International Relations. Pp. 322.

Mavrogordato, J. England in the Balkans. London. Anglo-Hellenic League.

Nicholson, Soterius. War or a united world. Washington, D. C.: The Washington Publishing House.

Ostwald, Paul. Japan's expansionspolitik 1900-1914. 8. Heft. Gegenwartsfragen 1913-15. Berlin. Pp. 44.

Perret, Robert. L'Allemagne, les neutres et le droit des gens. Paris: Bland et Gay. Pp. 64.

Pigou, A. C. The economy and finance of the war. London: Deut. Pp. 96.

Ponti, Ettore. La guerra dei popoli e la futura confederazione europea secondo un metodo analogico-stovico. Milan: Hoepli. Pp. xii-216.

Porter, Robert P. Japan the new world power. New York: Oxford Univ. Press.

Rignato, E. The war and the settlement. An Italian view. London: Council for the study of international relations. Pp. 100.

Rizens, Louis et Marchant, Louis. Réquisitions militaires. Paris: L. Fournier. Pp. 424.

Root, Elihu. Addresses on international subjects. Boston: Harvard Univ. Press. Pp. 463.

Schmitt, Bernadotte Everly. England and Germany. Princeton, N. J.: Princeton Univ. Press.

Scott, James Brown. An international court of justice. New York: Oxford University Press.

Seymour, Charles. The diplomatic back-ground of the war: 1870-1914. New Haven: Yale University Press.

Stanoyevich, Milivay S. Russian foreign policy in the east. Oakland Cal.: Liberty Publ. Co.

Stephen, L. Ivor. Neutrality. Chicago: Neutrality Press.

Stephens, Frank Fletcher. The Monroe Doctrine: its origin, development, and recent interpretation. Columbia: University of Mo. Pp. 25.

Stier-Somlo, F. und Zorn, Ph. Handbuch des völkerrechts. Stuttgart: W. Kohlhammer. Pp. IX-142.

Stowell, Ellery C. and Munro, Henry F. International cases. Vol. I. Boston: Houghton, Mifflin & Co.

Williams, Mary W. Anglo-American isthmian diplomacy. Washington, D. C.: Am. Hist. Association.

Worsfold, W. Basil. The empire on the anvil. London: Smith, Elder. Pp. 258.

Wright, P. Q. The enforcement of international law through municipal law in the United States. Urbana, Ill.: Univ. of Ill. Studies in the Social Sciences.

Articles

Aerial Warfare. Air navies of the future. *W. O. Horsnail.* Fort. Rev. June, 1916.

——— De l'emploi abusif des aérostats de guerre par les Allemands. *Edouard ChUNET.* Jour. du Droit Int. Nos. V-VIII. 1916.

Aliens. Loi applicable à la succession d'un étranger domicilié de fait en France ainsie qu' à la tutelle et à l'émancipation de ces hérétiers. *Jour. du Droit Int.* Nos. V-VIII. 1916.

America. America's bid for sea power. *Archibald Hurd.* *Int. Rev.* June, 1916.

——— La voix du droit en Amérique et la guerre. *A. De Lapradelle.* *Rev. Pol. et Parl.* Mars. 1916.

——— Purpose of the American neutrality. *James Davenport Whelpoley.* *Fort. Rev.* May, 1916.

Arbitration. Internationale schiedsgerichte und einigungs-ämter. *W. Kulemann.* *Archiv des Öffent. Rechts* XXXV, 3. 1916.

——— The origin of the Hague arbitral courts. II. The proposed court of arbitral justice. *Denis P. Myers.* *Am. Jour. of Int. Law.* April, 1916.

Austria-Hungary. An unwilling foe: sidelights on Austria-Hungary. *Mrs. Dickinson Berry.* *Nine. Cent.* May, 1916.

Baltic Sea. The Baltic and the sequel to a premature peace. *F. J. C. Hearnshaw.* *Nine. Cent.* April, 1916.

Belgium. Der Belgische volkskrieg und art. 1 und 2 der Haager landkriegsordnung. *Karl Staupp.* *Zeits für Völkerr.* IX. Heft 3. 1916.

——— Die neutralität Belgiens und die festungsverträge. *Josef Kohler.* *Zeits. für Völkerr.* IX. Heft. 3. 1916.

Blockade. Sea rights and sea power: Great Britain and the United States. *Sidney Low.* *Fort. Rev.* June, 1916.

——— Some phases of the law of blockade. *Alexander Holtzoff.* *Am. Jour. of Int. Law.* Jan., 1916.

——— The blockade and the honour of England: a reply to the Quarterly Review. *Francis Piggott.* *Nine. Cent.* May, 1916.

Boundaries. Built-up boundaries outweigh paper boundaries. *Samuel G. Weil.* *Col. Law Rev.* May, 1916.

British Empire. India and the war. *Sydney Brooks.* *N. Am. Rev.* April, 1916.

——— L'Empire britannique et la guerre. *Paul Hamelle.* *Rev. Pol. et Parl.* Avril et Mai, 1916.

——— Nationalism in the British empire. *A. Maurice Low.* *Am. Pol. Sci. Rev.* May, 1916.

——— The Empire on the anvil. *Charles Lucas.* *Nine. Cent.* June, 1916.

Citizenship. Nationalité d'un individu né en France d'un père "heimatlos" mais Allemand d'origine et d'une mère argentine. *Jour. du Droit Int.* Nos. I-IV. 1916.

Commerce. Commercial supremacy after the war. *Joseph Compton-Rickett.* *Contemp. Rev.* May, 1916.

Contraband. Is cotton contraband? *Edwin Maxey.* *Yale Law Jour.* June, 1916.

Contracts. La guerre et les contrats. *André Lebon.* *Rev. Pol. et Parl.* Mai, 1916.

——— Pactes et contrats. *G. Paturini.* *Rev. Gén. du Droit, de la Légis. et de la Juris.* Mars-Avril, 1916.

——— The war and the law of contracts. *W. Valentine Ball.* *Canada Law Rev.* May, 1916.

Contributions. Contributions de guerre mensuelles imposées par l'Allemagne aux pays d'occupation. *Edouard Clunet*, Jour. du Droit Int. No. I-IV. 1916.

Democracy and War. L'Union sacrée des démocraties. *Charles Richet*. La Paix par Le Droit. Avril, 1916.

Diplomacy. Democracy and diplomacy. *Earl Cromer*. Nine. Cent. June, 1916.

——— England's secret diplomacy. *H. M. Hyndman*. N. Am. Rev. May, 1916.

——— The secret of constructive diplomacy. *John Macdonell*. Contemp. Rev. June, 1916.

England. English democracy in war time. *Sidney Low*. N. Am. Rev. June, 1916.

Enemy Merchant Vessels. Some questions of international law in the European war X. *James W. Garner*. Am. Jour. of Int. Law. April, 1916.

Entente. The *Entente Cordiale*. *J. L. De Lanessan*. Contemp. Rev. May, 1916.

——— The beginning of the Anglo-French alliance. *T. H. S. Escott*. Contemp. Rev. June, 1916.

Espionage. The peril of espionage. *John B. Stanchfield*. N. Am. Rev. June, 1916.

France. La guerre et les ressources de la France. *Fernand Faure*. Rev. Pal. et Parl. Avril, 1916.

——— La diplomatie française et les aïeux du premier roi de Prusse. *Eug. Griselle*. Rev. D'Hist. Dip. No. 1. 1916.

France and England. La France et l'Angleterre.—hier—aujourd'hui—demain. *J. L. De Lanessan*. Rev. Pol. et Parl. Avril, 1916.

French Colonies. Nos grandes colonies et la guerre. *Henri Brenier et Jean Barbizet*. Rev. des Sci. Pol. Avril, 1916.

Germany. How the army has ruined Germany. *J. Ellis Barker*. Nine. Cent. April, 1916.

——— The German peril after the war. *Archibald Hurd*. Fort. Rev. May, 1916.

——— The real aims of the "peaceful" German nation. *J. W. Headlam*. Nine. Cent. May, 1916.

Germany and Italy. Condition des Allemands en Italie postérieurement à la déclaration de guerre à l'Autriche. *J. Valéry*. Jour. du Droit Int. Nos. V-VIII. 1916.

Holland. The German menace to Holland. Fort. Rev. May, 1916.

Hungary. Les Hongrois de demain. *André Duboscq*. Rev. Pol. et Parl. Mars. 1916.

Ireland. Germany and Ireland: "England's Achilles-Heel." *Walter Sichel*. Nine. Cent. May, 1916.

International Law. Cosmopolitan custom and international law. *Frederick Pollard*. Harv. Law Rev. April, 1916.

——— International realities. *Philip Marshall Brown*. N. Am. Rev. April, 1916.

——— L'Allemagne et le droit des gens. *Charles Dupries*. Avril, 1916.

——— Le droit international d'hier et de demain. *Andre Weiss*. La Paix par Le Droit. Mars, 1916.

International Law. Le droit public en temps de la guerre. *Joseph-Barthélemy*. Rev. du Droit Pub. et de la Sci. Pol. XXXIIIe, No. 1. 1916.

—— The declaration of rights and duties of nations adopted by the American Institute of International Law. *Elihu Root*. Am. Jour. of Int. Law. April, 1916.

—— The outlook for international law. *Elihu Root*. Am. Jour. of Int. Law. Jan., 1916.

—— The sanction of international law. *Amos J. Peaslee*. Am. Jour. of Int. Law. April, 1916.

International Police. International organization and police. *James L. Tryon*. Yale Law Jour. May, 1916.

International Waters. Zur lehre des internationalen wasserrechts. *Lederle*. Annalen des Deutschen Reichs. 1915, 8, 9.

Interned Enemies. Action en justice en Angleterre des sujets ennemis internes. Jour. du Droit Int. Nos. V-VIII. 1916.

Japan. Closing the open door. *George Bronson Rea*. N. Am. Rev. May, 1916.

—— Shall America prepare against Japan? *K. K. Kawakami*. N. Am. Rev. May, 1916.

Japan and China. The negotiations between Japan and China in 1915. *S. N. D. North*. Am. Jour. of Int. Law. April, 1916.

Latin America. L'Amérique latine en 1915. *Henri Lorin*. Revue de Sci. Pol. Avril, 1916.

Mexico. President Wilson's Mexican policy. *L. Ames Brown*. Atlan. Mo. June, 1916.

Monroe Doctrine. Should the Monroe policy be modified or abandoned? *Robert O. Armstrong*. Am. Jour. of Int. Law. Jan., 1916.

—— The Monroe Doctrine—its past and present status. *Roger B. Merri-man*. Pol. Quart. March, 1916.

Naval Warfare. Naval warfare: law and license. *T. Baty*. Am. Jour. of Int. Law. Jan., 1916.

Neutral Merchant Vessels. Some questions of international law in the European war, IX. *James W. Garner*. Am. Jour. of Int. Law. Jan., 1916.

Neutral Vessels. Ravitaillement de l'ennemi par le moyen des navires neutres. Jour. du Droit Int. Nos. V-VIII. 1916.

Neutrality. A preliminary test of neutrality. *Albert H. Putney*. Yale Law Jour. April, 1916.

—— Belligerents and neutrals at sea. *Norman Bentwich*. Law Quart. Rev. April, 1916.

Orient. Le Saint-Siège et la question d'Orient au XVIe siècle. *J. Martin*. Rev. D'Hist. Dip. No. 1. 1916.

Poland. New partitions of Poland. *Polonius*. Contemp. Rev. June, 1916.

Prisoners. Concerning prisoners of War. *Herbert Bury*. Nine. Cent. April, 1916.

—— Die kriegsgefangenen und das internationale recht. *Julius von Wlossics*. Zeits. für Völkerr. IX. Heft 3. 1916.

Prizes. The law of the prize court. *H. Reason Pyke*. Law Quart. Rev. April, 1916.

- Sea Power.** Sea power in its dual relation. *E. Hamilton Currey*. Nine. Cent. June, 1916.
- Sequestration.** Rôle des administrateurs-sequestres des biens appartenant à des ennemis en France. *A. Reulas*. Jour. du Droit Int. Nos. I-IV. 1916.
- Sweden.** Sweden and the belligerents. *E. J. Dillon*. Contemp. Rev. June, 1916.
- Turkey.** La pénétration allemande en Turquie d'Asie. *Joseph Thureau*. Rev. Pol. et Parl. Avril, 1916.
- The future of Asiatic Turkey. *J. Ellis Barker*. Nine. Cent. June, 1916.
- War.** Dépenses de guerre et coût de la guerre. *Charles Gide*. La Paix par Le Droit. Avril, 1916.
- Frightfulness as Christianity. *Morrison I. Swift*. N. Am. Rev. April, 1916.
- La guerre et la pensée. *Louis Boisse*. La Paix par Le Droit. Avril, 1916.
- Pourquoi nous luttons. *Paul Teissonnière*. La Paix par Le Droit. Mars, 1916.
- Some after-war problems. *J. A. Smith*. Quart. Rev. April, 1916.
- The trials to come. *Arthur Shadwell*. Nine. Cent. May, 1916.
- Trials to come. (1) Preparation for peace. *Arthur Paterson*, (2) Our soldiers after the war: a suggestion. *George S. C. Swinton*. Nine. Cent. June, 1916.
- War and supplies, in reference to wool. *D. N. Macgregor*. Pol. Quart. March, 1916.
- With the French armies. *J. H. Morgan*. Nine. Cent. April, 1916.
- War Finance.** How Germany can pay. *Francis Gribble*. Nine. Cent. May, 1916.
- The War and French finance. *Edouard Julhuit*. N. Am. Rev. May, 1916.
- War finance: the fourth war budget. *J. A. R. Marriott*. Nine. Cent. May, 1916.

JURISPRUDENCE

Books

- Beale, J. H.* A treatise on the conflict of laws. Vol. I, Part 1. Cambridge: Harvard University Press.
- Blyth, E. E.* Snell's principles of equity: an analysis of the 16th ed. London: Stevens & Haynes.
- Bonger, William Adrian.* Criminality and economic conditions. Boston: Little, Brown & Co.
- Covoï, Jean.* La violence en droit criminel romain. Paris: Plon-Nourrit et Cie. Pp. 364.
- Di Pisa, S. A.* Il grado di interesse necessario per ricorrere alle sezioni giurisdizionali del consiglio di stato. Roma: Athenaeum.
- Eastwood, R. A.* A brief introduction to Austin's theory of positive law and sovereignty. London: Sweet & M.

Huet, Henri. De la protection possessoire des servitudes réelles (thèse). Paris: Henri Delesques. Pp. ix-185.

Larnaude, F. Les sciences juridiques et politiques. Paris: Larousse. Pp. 75.

Mannooch, J. K. Analysis of Sir Frederick Pollock's law of torts. London: Stevens. Pp. 112.

Pollock, Frederick. The law of torts. 10th ed. London: Stevens. Pp. 728.

Szirtes, Arthur. Die rechtswissenschaft. Hannover: Helwingsche Verh.

von Bar, Carl Ludwig. A history of continental criminal law (Continental Legal History series, Vol. VI) Boston: Little, Brown & Co.

Wiener, Leo. Commentary to the Germanic laws and mediaeval documents. London: Oxford Univ. Press.

Articles

Ancient Law. Les lois des Babyloniens et des Hébreux. *René de Kérallain.* Rev. Gén. du Droit, de la Légis. et de la Juris. Mars-Avril, 1916.

Consideration. Definition of consideration. *John Barker Waite.* Mich. Law Rev. May, 1916.

Criminal Law. Die systematik der Vermögensdelikte. *August Hegler.* Archiv für Rechts- und Wirtschaftsphil. Januar, 1916.

Damages. A compensation plan for railway accident claims. *Arthur A. Ballantine.* Harv. Law Rev. May, 1916.

——— Verursachung, begünstigung, rechtswidrigkeit als voraussetzungen der schadenschaffung. *Max Mihurko.* Zeits. für Priv. und Öffent. Recht. XLII, 1, 2. 1916.

Equity. Chancery in chambers in England today. *Samuel Rosenbaum.* Ill. Law Rev. May, 1916.

——— Equitable relief against deformation and injuries to personality. *Roscoe Pound.* Harv. Law Rev. April, 1916.

France. La "notion de droit" en France au XIX^e siècle. *J. Bonnetcase.* Rev. Gén. du Droit, de la Légis. et de la Juris. Mars-Avril, 1916.

Jurisprudence. Montesquieu and sociological jurisprudence. *Eugene Ehrlich.* Harv. Law Rev. April, 1916.

——— The jurisprudence of M. Duguit. *W. Zethro Brown.* Law Quart. Rev. April, 1916.

Law. Das entwicklungsgesetz der fortschreitenden vergeistigung des rechts, I. Neukamp. Archiv für Rechts- und Wirtschaftsphil. Janua, 1916.

——— Ueber kritische und metaphysische rechtsphilosophie. *Julius Binder.* Archiv für Rechts- und Wirtschaftsphil. Januar, 1916.

——— Zur hermaneutik der soziologischen rechtsfindungstheorie, I. *Hans Wüstendorfer.* Archiv für Rechts- und Wirtschaftsphil. Januar, 1916.

Procedure. Revised civil procedure in New York as proposed by the board of statutory consolidation. *Herbert Harley.* Ill. Law Rev. May, 1916.

——— Studies in English civil procedure. III. The county courts. *Samuel Rosenbaum.* Penn. Law Rev. April, 1916.

——— The Michigan judicature act of 1915, III, IV. *Edson R. Sunderland.* Mich. Law Rev. April, May, 1916.

Reform. Proposals for law reform. *Samuel B. Clarke*. *Am. Law Rev.* L, No. 2. 1916.

Roman Law. The reception of the Roman Law in Germany. *Charles Sumner Lobingier*. *Mich. Law Rev.* May, 1916.

Torts. Justice Holmes and the law of torts. *John H. Wigmore*. *Harv. Law Rev.* April, 1916.

LOCAL GOVERNMENT

Books

McBain, Howard Lee. The law and practice of municipal home rule. New York: Columbia University Press. Pp. 724.

Sparks, Frank M. The business of government: municipal. Rand, McNally & Co.

Articles

British Cities. Comparative statistics of British cities. *Le Grand Powers*. *Nat'l Mun. Rev.* April, 1916.

City Manager. The new profession of city manager. *Richard S. Childs* and others. *Nat'l Mun. Rev.* April, 1916.

Cleveland. Mayor Baker's administration of Cleveland. *C. C. Arbuthnot*. *Nat'l Mun. Rev.* April, 1916.

Home Rule. The progress of municipal home rule in Ohio. *Mayo Fesler*. *Nat'l Mun. Rev.* April, 1916.

Inspection. Standardization and inspection. *J. A. Dunaway*. *Am. Pol. Sci. Rev.* May, 1916.

Local Government. The doctrine of an inherent right of local self-government. *Howard Lee McBain*. *Columbia Law Rev.* April, 1916.

Metropolitan Court. A model act to establish a court for a metropolitan district. *Herbert Harley*. *Yale Law Jour.* April, 1916.

Philadelphia. The Blankenburg administration in Philadelphia. *Charles Francis Jenkins*. *Nat'l Mun. Rev.* April, 1916.

Salaries. Standardization of salaries in American cities. *William C. Beyer*. *Nat'l Mun. Rev.* April, 1916.

Sheriff. The sheriff's return. *Edson R. Sunderland*. *Columbia Law Rev.* April, 1916.

POLITICAL THEORY AND MISCELLANEOUS

Books

Andreae, Johann Valentin. Christianopolis: the ideal state of the seventeenth century. Oxford Univ. Press. Pp. 287.

Burgess, John W. The administration of President Hayes. New York: Charles Scribner's Sons.

Calvert, Albert F. The German African empire. London: W. Laurie. Pp. 371.

Casse, Gellio. Il mare adriatico: sua funzione attraverso i tempi. Milan: Hoepli. Pp. XIX-532.

Fife, Robert Herndon. The German Empire between two wars. New York: The Macmillan Co.

Foraker, Joseph Benson. Notes of a busy life. 2 vols. Cincinnati: Stewart & Kidd Co.

Ford, Henry Jones. Woodrow Wilson. New York: D. Appleton & Co.

Gierke, O. Die grundbegriffe des staatsrechts und die neuesten staatsrechtstheorien. Tübingen, J. C. B. Mohr. Pp. 132.

Gillette, John M. Sociology. Chicago: A. C. McClurg & Co. Pp. 159.

Gladden, Washington. The forks of the road. New York: The Macmillan Co.

Hull, William I. Preparedness. New York: Fleming H. Revell Co.

Jastrow, J. Geld und Kredit im Kriege. Jena: G. Fischer. Pp. III, 97.

Jèze, Gaston. Les finances de guerre de la France. Paris: Giard et Brière. Pp. 297.

Kalaw, Maximo M. The case for the Filipinos. New York: The Century Co.

O'Laughlin, John Callen. Imperiled America. Chicago: Reilly & Britton Co.

Pal, Bipin Chandra. Nationality and empire. Calcutta: Spink. Pp. 416.

Parmelee, Maurice. Poverty and social progress. New York: the Macmillan Co.

Prothero, G. W. German policy before the war. London: J. Murray. Pp. 120.

Scherer, James A. B. The Japanese crisis. New York: Frederick A. Stokes Co.

Schneider, K. C. Mitteleuropa als Kulturbegriff. Wien: Orion-Verlag.

Scott, William A. Money and Banking. 5th ed. rev. enlarged. Henry Holt & Co. Pp. 406.

Steiner, R. The philosophy of freedom. New York: Putnam.

Stephens, Kate. The mastering of Mexico. Macmillan.

Tangorra, Vincenzo. Trattado della scienza della financia. Ier vol. Milan: Via Antonio.

Wood, Leonard. Our military history, its facts and fallacies. Chicago: Reilly & Britton Co.

Articles

Alcoholism. The alcoholic as seen in court. *Victor V. Anderson.* Jour. of Crim. Law and Crim. May, 1916.

Civil Service. Standardization of salaries and grades in civil service. *Robert Moses.* Am. Pol. Sci. Rev. May, 1916.

Decline of Rome. Rome's fall reconsidered. *V. S. Simkhovitch.* Pol. Sci. Quart. June, 1916.

Education. Education after the war. *Arthur C. Benson.* Nine. Cent. June, 1916.

Feeble-Mindedness. A police psychopathic laboratory. *Louis E. Bisch.* Jour. of Crim. Law and Crim. May, 1916.

—— A psychological basis for the diagnosis of feeble-mindedness. *Rudolf Pintner and Donald G. Peterson.* Jour. of Crim. Law and Crim. May, 1916.

——— Who is feeble-minded? *J. E. Wallace Wallin*. Jour. of Crim. Law and Crim. May, 1916.

Frederick the Great. La morale politique du grand Frédéric, d'après sa correspondance. *Weil*. Rev. D'Hist. Dip. No. 1, 1916.

Ireland. Pacata Hibernia. *Hugh Law*. Contemp. Rev. June, 1916.

——— The Irish enigma again. *Joseph R. Fisher, J. Clerk Sheridan, Robert H. Murray*. Nine. Cent. June, 1916.

Mexico. The land problem in Mexico. *Lebreus R. Wilfley*. N. Am. Rev. June, 1916.

Monopoly. Capital and monopoly. *Oswald W. Knauth*. Pol. Sci. Quart. June, 1916.

Nature of State. Der gesetzestaat und die empirie. *Friederich Tezner*. Archiv des Öffent. Rechts. XXXV, 3. 1916.

——— Der staat als sittliches wesen. *A. Mendelssohn Bartholdy*. Archiv für Rechts- und Wirtschaftsphil. Januar, 1916.

Political Theory. Le fondement de l'autorité politique. *M. Haurion et H. Berthélemy*. Rev. des Droit Pub. et de la Sci. Pol. XXXIIIe, No. 1. 1916.

Preparedness. Preparedness as a political issue. *George Harvey*. N. Am. Rev. April, 1916.

Prisons. The English prison system and what we can learn from it. *Charles O. Ellwood*. Jour. of Crim. Law and Crim. May, 1916.

Public Utilities. Return on public utilities investments. *John Bauer*. Pol. Sci. Quart. June, 1916.

Railways. Federal financial railway legislation. *William A. Ripley*. N. Am. Rev. April, 1916.

——— National railways after the war: a reply to Mr. Hyndman. *Alfred Warwick Gattie*. Nine. Cent. June, 1916.

Social Classes. Political thought of social classes. *W. F. Ogburn and Delvin Peterson*. Pol. Sci. Quart. June, 1916.

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THE BRITISH EMPIRE AND CLOSER UNION

THEODORE H. BOGGS

University of British Columbia

I

Although British sentiment for several decades had been steadily growing more imperialistic, it was not until the outbreak of the war that the process was completed, and with dramatic suddenness. The "Little Englanders," already dwindling in numbers, were confounded by the immediate and practical manifestations of colonial loyalty of which England was glad to avail herself. The murmurings of the anti-imperialist ceased in the face of such expressions of empire good-will as that contained in the message of the Canadian ministry to the British government on August 2, 1914. "If unhappily war should ensue," ran the message, "the Canadian people will be united in a common resolve to put forth every effort and to make every sacrifice necessary to insure the integrity and to maintain the honor of our Empire."

However, notwithstanding the impetus given by the war to the doctrines of imperialism and militarism, the believer in the principles of internationalism cannot be denied a crumb of comfort from the same event. He clings to the hope that the world-wide war, through its very enormity, will actually serve to preach peace more effectively than any pacifist can possibly do,

and that international arbitration and simultaneous suppression of armaments among civilized peoples may therefore be hastened.

Already there is an increasing willingness to question the validity of the ideals of nationalism with its attendant race-instinct or patriotism. For a substitute creed many are turning to internationalism, vague and untried as most of its principles still are. This straw is being clutched at by many in the present crisis as the sole hope for the future. That the anarchy of conflicting nation-states must be superseded by a system of internationalism, in which peace and international rights will be enforced, is the message of this growing number of enthusiasts. Indeed a long step in the direction of an international union already seems to have been taken at a conference held in Paris in April, 1916. On this occasion, representatives of the allied powers met to consider such economic and commercial questions as the establishment of a joint-tariff system, the introduction of penny postage between the Allies, and the formation of an international patent office. It is true, to be sure, that the fundamental purpose of such a joint tariff system—post-bellum discrimination against Germany—does not make for world unity. However, it is to be hoped that such discrimination will not be permanent, but instead will disappear with the cooling of war-heated passions. Many cabinet ministers were among the delegates in attendance at the conference, which not inaptly may be designated a legislative parliament of France, Russia, England, Italy, Belgium, Serbia, Japan, and the self-governing British dominions. If the agreements growing out of this event stand the test of time, they will dispose effectively of the contention that dissimilar nations cannot act in harmony for their mutual advantage in matters international.

Much less pretentious than such a possible international union is the proposal so to reconstruct the British Empire as to insure to it greater unity and permanency. To even the cosmopolitan internationalist this plan can not be without its appeal. For, notwithstanding his ideal of a union of all mankind, based upon international coöperation, a binding body of international law, and upon a declining emphasis on national greatness, the inter-

nationalist may quite consistently concur in suggestions making for a more permanent organization of the empire. Indeed, by very reason of his principles he may logically welcome such action owing to the impression, more or less current, that a British imperial union may well serve as the working model if not the nucleus of a larger world union. There is little in the imperial union, when one considers the diversity of races, civilizations, and interests under the British flag, to differentiate it from a union of all mankind, save the difference in bulk. Whereas the federation of the world is yet but a glorious aspiration, imperial unity is within reach. It is not improbable, therefore, that the dawn of a world league would be hastened through the establishment of a more complete British union. This union might logically either precede or be synchronous with an alliance between the United States, the British Empire and France. Such a league, embracing not less than one-third of mankind, would surpass both in area and in population any other *natural* alliance at all probable under existing circumstances. That the Allies do not constitute a natural group will perhaps be readily conceded in the face of their widely differing systems of government and political traditions. By leaving the door open through which to welcome other members to the tripartite union, the interests of humanity as a whole would in no sense be abandoned.

It is necessary, of course, to declare with utmost haste that the foregoing is conditioned on the premise that motives of national aggrandisement and national enmity must be subordinated to the desire for the larger benefits growing out of peace and international good-will.

Doubtless it will be stoutly maintained that a British imperial union would in its very nature involve motives of aggrandisement, and a limitation on democracy and freedom. In rejoinder it is but necessary to allude to the political structure already in existence, through which the natural impulses of the colonial peoples toward national identity are harmonized with the continuance of the British connection. The unique political status of the dominions, so highly prized by them, is the fruit of a long and oftentimes painful process of evolution. Within the past

two decades, these states, bursting the colonial chrysalis, have emerged into nationhood. Indeed, at the colonial conference of 1907, the secretary for the colonies concurred in the principle laid down by the British prime minister that the "essence of the imperial connection" is to be found in "the freedom and independence of the different governments which are a part of the British Empire." The support of the leaders of India, not less than the loyalty of the Indian regiments, serves also as testimony to the character of British rule. Alike among distinguished Indians and British statesmen the hope is gaining ground that the future contains for India a democratic political system not wholly unlike that already enjoyed by the self-governing dominions. In the light of present conditions, therefore, it would seem entirely appropriate to condition the formation of a closer imperial union upon principles of political democracy.

Yet, despite its virtues, the present political structure of the empire has been deemed unsatisfactory. Having obtained extensive powers, the dominions have been tending toward the development of separate external policies. Canada negotiates, for example, with foreign countries for reciprocity agreements, of which practice notable illustrations are found in the Franco-Canadian commercial treaty of 1907, and in the ill-starred reciprocity agreement of 1911 with the United States. Canada, also in 1907, sent an official representative to Japan to negotiate a treaty relative to oriental immigration. The dominions frame their own tariffs, determine their immigration policies, and formulate their military and naval programs with a view primarily of serving their own individual interests. The welfare of the empire as a whole has been a matter of secondary importance. In all this Great Britain has acquiesced, not having the power to do otherwise, owing to the right of autonomy, which, having been conferred upon the dominions, has been in no danger of falling into disuse. To the advocate of closer imperial union the inevitable result of this process must eventually be the disintegration of the empire.

Against the continuance of the *laissez faire* policy of accepting conditions as they arise, many have been raising their voices.

Mr. H. M. Hyndman, for example, in speaking of the British people, has declared that "we are rubbing along in apathetic fashion as our fathers have done before us and imagine that if we can manage our business and handle our disputes, misdemeanors, and crimes without anything in the shape of a codified law, we can equally well conduct our polity without anything approaching to a constitution. We are quite content to drift alike in calm and storm. Those who are wise enough or fidgety enough to ask for a compass, and to request that we should set a definite course are regarded, until the crash comes, as mere wiseacres and meddlers who do better to attend to their own matters alone."

II

Accordingly the imperialist urges the establishment of a more complete and permanent union of the empire. He would meet the demands of the dominions for a complete national life and for a voice in the decision of their destinies by admitting them to full partnership with Great Britain itself in the control of imperial policies of common interest to all parts of the empire. Few probably will deny that the dominions have abundantly won the right—as they have shared the burden—to share authority in the councils of the empire. Near the close of the year 1915, Sir Robert Borden, the Canadian premier, in alluding to this issue declared that "our empire seems to us something greater than it was a year ago. When mighty armies from the dominions and dependencies arrayed themselves in its battle-line, a new and impressive epoch in its history was marked. It is realized that the great policies and questions which concern and govern the issues of empire peace and war can not in future be assumed by the people of the British Islands alone."

Imperialists, however, are divided into two schools of thought. While agreeing over the end to be achieved, they differ over the means to be employed. Their common purpose was concisely stated by the late Joseph Chamberlain, who at one time declared that "an effort is to be made to find, and having been found to pursue, a common policy by which the development of each unit

of the empire may be made to serve the interests of the whole, and the strength of the whole to safeguard and promote the development of each." In the phrase of Lord Milner the ultimate ideal for the empire is that of a "union in which the several states, each entirely independent in its separate affairs, should all coöperate for common purposes on the basis of absolute unqualified equality of status."

Of the two solutions proposed to attain this end, imperial federation has the advantage of priority and number of adherents. The ideal of a Britannic alliance, too recent to have obtained an impressive following, is deemed by its advocates, however, to be more in harmony with sentiment current in the empire. Fundamentally, the difference between the two is one of degree rather than of principle. In the scheme of federation, a federal parliament would be created, made up of representatives of Great Britain and the dominions, with an executive responsible to it. All matters pertaining to the empire at large, such as defense, commerce and immigration, would be subject to control by this imperial body in peace as well as in war. The conception of the Britannic alliance, on the other hand, makes no call for any act of constitution-making and makes no demand for a new imperial government. It would involve the process of deliberately continuing developments already well begun, supplemented by a further elaboration of the imperial conference to serve as a central organization.

By both schools the principle of imperial preference is regarded as an essential to success. The federationist declares that it is almost unthinkable that imperial unity should be achieved and permanently secured save through the help of imperial preferential tariff rates. It was the assertion of Mr. Chamberlain that "a common trade policy is the indispensable basis of a common imperial policy." At the same time, Mr. Jebb, a prominent advocate of a Britannic alliance, has pointed out that an alliance could not succeed unless it were reënforced with "a network of economic interests between the allied peoples." Through such conditions the belief would grow that "the imperial connection was a national asset rather than an incubus or a risk." All seem

agreed that if the British Empire is to hold together as a great federation of free democracies it is essential that there should be an increasing solidarity of thought and feeling on such questions of policy as trade and defense which concern all alike. It is felt therefore that cleavage must follow if any member of the federation should indefinitely pursue a policy which the others may regard as injurious.

In the light of the foregoing it may appear strange that the great obstacle in the path of imperial preference has been England's continued adherence to the policy of free trade. For decades, and with growing insistence, the dominions have been urging the principle of imperial preference upon Great Britain. Although these suggestions met with indifference at first and seemed fruitless, Sir Wilfrid Laurier was inspired, in 1897, with the idea of giving effect to the principle in Canada without waiting for British reciprocation. Canada's example was followed by the other dominions, which fact combined with the vigorous campaign waged by Mr. Chamberlain and others awakened an interest in Britain in the cause of colonial preference. It was after the disappointing results of the colonial conference of 1902 that many began to realize that, for practical purposes, there was a fundamental defect in the traditional conception of colonial "loyalty" to England, and of dutiful acquiescence in British ascendancy. This opportunity, so favorable to a constructively Liberal treatment of the Britannic question, was taken advantage of, however, by certain Conservative leaders, who began discussing imperial questions of trade and defense in terms of partnership rather than ascendancy and of equal alliance rather than colonial dependence. And yet the preference so long desired was not forthcoming.

Notwithstanding the absence of British reciprocation the dominions have continued their policy of preference. The original concession by Canada in 1897 amounted to a reduction of $12\frac{1}{2}$ per cent in the customs duties in favor of Great Britain. Since 1900, the average of rates levied on British goods has normally been $33\frac{1}{3}$ per cent lower than the general average of duties. Both New Zealand and South Africa adopted the principle of

preference in 1903, and similar action was taken by Australia in 1908. That the preferential rates represent a genuine concession will be obvious from a comparison of actual duties. In the year 1912, the average rate of duty levied in New Zealand on British goods, subject to preference, was 13 per cent, whereas the same goods if of foreign origin would have been charged a rate of 25 per cent. The corresponding rates for Australia were 13 and 18 per cent respectively, and for South Africa 10 and 13 per cent. Considered as a reduction from the general rates levied on foreign goods, the British preference represented an abatement of approximately 50 per cent in the case of New Zealand, 30 per cent in Australia, and nearly 25 per cent in South Africa.

III

It is significant that the war already has altered the Englishman's traditional attitude toward protection and preference. Owing to political and military exigencies, accentuated by national enmities, public opinion is undergoing a radical change. The problem of securing an imperial self-sufficiency is looming large on the British horizon, inasmuch as insular self-sufficiency is impossible. At the same time a quickened feeling of imperial solidarity has not unnaturally arisen as a result of empire coöperation on the battlefields of Europe.

Already definite proposals are being discussed for particular restrictions and preferences. At the notable meeting of the British Association of Chambers of Commerce held in London in March, 1916, resolutions were adopted which may have far-reaching effects on the economic future not only of the empire but of the world. Among the 1000 or more delegates to this conference were representatives of every considerable commercial and industrial organization in the British Isles, and of similar bodies in the outlying parts of the empire. The British government was represented by Reginald McKenna, chancellor of the exchequer, and there were official representatives present from many of the colonies. Among the resolutions adopted, two reflect clearly a sentiment for a complete readjustment of the

British commercial policy. The first one, unanimously adopted, declared that "the experience of the war has shown that the strength and safety of the British nation in time of national peril lie in the possession by this nation of the power to produce its requirements from its own soil and its own factories rather than in the possession of values which may be exported and exchanged for products and manufactures of foreign countries." After some opposition on the part of adherents of free trade, a second resolution was adopted with practical unanimity. It provided: "First, for preferential trading relations between all British countries; second, for reciprocal trading relations between the British Empire and allied countries; third, for favorable treatment of neutral countries; fourth, for restrictions by tariffs and otherwise on all trade relations with enemy countries, so as to make it impossible to return to pre-war conditions."

In his address before the conference, however, Mr. McKenna would not commit the administration to any radical departure from the national policy of free trade. Again, early in April, in introducing the war budget, Mr. McKenna reverted to the question as to whether tariff duties might be used for controlling and directing trade along desired lines. "Any attempt in this direction," he declared, "would be met by insuperable preliminary difficulties in finding the necessary machinery to give effect to such proposals."

Still the significant fact remains that there is a growing public sentiment in favor of a change in fiscal policy. Even in Manchester, the great stronghold of the principles of Adam Smith and Richard Cobden, there is evidence of changing opinion, as illustrated in the sharp opposition which developed against a resolution presented by the board of directors to the Manchester chamber of commerce at its annual meeting in February, 1916. The directors submitted a statement affirming the adherence of the chamber to the policy of free trade and its resistance to protective tariffs, on the ground that tariffs tend to bolster up inefficient industries at the expense of the community. This resolution was repudiated by the meeting by an overwhelming majority, and in opposition to it two counter-propositions were put

forward. The less drastic and radical of the two declared that Germany and Austria should not be entitled, after the war, to the same facilities for trading with the United Kingdom as those granted to allied and neutral nations, and that for that object the chamber would be prepared to support, if necessary, a tariff on German and Austrian goods. Many of the hitherto strongest supporters of free trade are confessing that the perspective has been entirely altered by the circumstances growing out of the war, and that Germany cannot be permitted to enjoy hereafter the same commercial opportunities in the British Isles that she possessed before the war. It is becoming increasingly clear that there is small solicitude for the preservation, as a sacred institution, of the traditional free trade policy.

Debates in parliament also show unmistakably the trend of public opinion. Perhaps the most important evidence of a change in the national attitude lies in the willingness of the British government to coöperate along tariff lines with its allies as indicated in the conference held in Paris, to which reference has already been made. "Russia made the first public proposals," declares Mr. Brailsford, "for a prolongation of the present war of trenches and torpedoes into a new war of tariffs and boycotts; France took the initiative in calling the conference; we in England have followed their lead." While England has not formally abandoned free trade, the decision has been made at least in principle through the very willingness to act after the war in economic alliance with France and Russia, since, in order to coöperate in such manner the British fiscal system must in a degree become protectionist. In the opinion of Professor Nicholson, of Edinburgh, the British people "are not likely to look again with complacency on the growth of German navigation and the expulsion of British ships from old trade routes. Some revival of our old navigation policy seems very likely."

Doubtless the revival will be justified on the same grounds on which Adam Smith based his approval of the old navigation acts. While admitting that these regulations were not favorable to the growth of the maximum of national wealth, and that they were the result of national rivalry against the Dutch, he

nevertheless commended them as the wisest piece of British commercial legislation. His conclusion that "Defense is of more importance than opulence" has been revived and is being quoted extensively.

It is obvious on reflection that if a change in the British fiscal policy be effected, the event will have profound and far-reaching results throughout the civilized world. British free trade has come to be looked upon almost as an immemorial institution possessing a permanent quality. More than that, it has been invested by many in all lands with a moral quality as well. It has been held up as a closer approach to an ideal fiscal system than any other yet devised. Recognizing that it is implicit in the very theory of tariff protection that certain classes in the country must carry an economic burden to the advantage of others, which would not be the case if trade were free, it has been felt that a greater measure of tariff justice was attained in Great Britain than in protectionist countries. Yet in the present juncture we discover that what had been conceived to be permanent gives evidence of impermanence. In the present crisis even the champions of free trade are being swept from their long established position, and are being brought to admit that there are other national ends than the pursuit of wealth which must be safeguarded. While clinging to their convictions as to the economic soundness of free trade principles, they admit as never before that a free trade policy may fail to serve the ends of national security and military preparedness.

The abandonment of free trade by England will be looked upon as a genuine step backwards by believers in internationalism. Maintaining that tariffs constitute an important source of international friction, they deduce the conclusion that the era of internationalism can not well be ushered in save through the erasure of tariff barriers. If, therefore, England, the one great exemplar of free trade principles, is now led to repudiate her fiscal policy it is feared that the realization of their hopes will be indefinitely postponed. It will be evident on reflection that this is not an idle fear. In the event of adoption by England of a protectionist policy, the underlying reason for such change

will undoubtedly be the desire to render herself and the empire more nearly self-sufficient. An accompanying motive will be the desire concurrently to retard the economic recovery of Germany. To be sure, this motive, at present much exploited, will lose much of its virulence when the calm of peace returns and public opinion reverts to its customary channel. The effect, however, of a British policy of restriction applied to imports from Germany will not be to hasten the obliteration of the present animosities. It should also be borne in mind that a return to protection will be accompanied inevitably by the growth of vested interests which, when once brought into existence, develop a most surprising tenacity of life.

Yet, in the face of all these conditions, the hope remains that from the recent economic conferences in Paris, with their proposed joint tariff system for the Allies, there may emerge the ultimate solution of the world problem. If, when the time of settlement of the present conflict arrives, the Allies are able to point out to Germany that their military and naval unity is unbroken and that they constitute a tariff unit as well, two alternative courses will be open to them. To Germany's question as to what they will take to open their markets there will be two answers. One of them, as pictured by Mr. Brailsford, would be that "we do not mean on any terms to open that market; our central purpose is to break your power and therefore your trade." The other answer would be that "we will open our markets, we will even allow you reasonable facilities for economic expansion, but we insist in return on certain concessions to the principle of nationality, and on certain guaranties for an enduring peace." Except in the event of a miracle bringing an overwhelming victory, the Allies must choose, it would seem, between these alternatives. We are reminded by Mr. Brailsford that "if they decide to build the settlement on the basis of a trade war, they must perforce lighten their cargo of ideals." A program of economic reprisal carried beyond a certain point would be as suicidal as one of military reprisal. Accordingly a policy of commercial reprisal undertaken at the end of the war should show "a constructive and healing rather than a regative

and punitive object." The commercial policy of the Allies toward Germany should not be formulated with the ultimate object of perpetuating and intensifying a feud. It should, on the contrary, aim to reach an understanding as to the formation of an international system into which Germany could ultimately enter as an equal.

IV

Notwithstanding England's adherence for seven decades to the policy of free trade, the principle of colonial preference was for centuries a feature of the British fiscal system. From the beginning of British colonial enterprise until the free trade era of 1846, preference in one form or another was an accepted principle of the imperial policy of England. The first tariff preferences were granted to the colonies as long ago as the reign of James I. With the progress of the free trade movement, however, the old preferences were abolished contrary to the wishes of the colonies. This fact is brought out in the correspondence between Mr. Gladstone, when colonial secretary in Sir Robert Peel's administration in 1846, and Lord Cathcart, then governor-general of the provinces of Canada. Lord Cathcart urged the continuance of the preferences on the ground that their withdrawal would seriously interfere with Canadian commerce with the parent state. Mr. Gladstone, however, defended the policy of the administration. The last of the colonial preferences were abandoned in 1860.

It is significant that the present-day imperialist concurs in the opinion advanced nearly eight decades ago by Richard Cobden, an early champion of cosmopolitanism, that a free trade policy must result eventually in the dissolution of the empire. In the course of a letter written in 1842, he declared that free trade would "gradually and imperceptibly loose the bands which unite our colonies to us."

It is perhaps not strange, therefore, that in its modern form the policy of preference is one aspect of a general movement toward the consolidation of the empire. The desire for the readoption of preference, in a form adapted to modern con-

ditions and arranged on a reciprocal basis, has found formal expression at the several conferences held at intervals since 1887 between British and colonial statesmen. Indeed, even before the first conference in 1887, Canadian leaders had repeatedly urged upon British authorities the desirability of reciprocal tariff arrangements within the empire. It has been the expressed aim of every Canadian ministry which has held office since the confederation of the provinces in 1867 to remove obstacles in the way of building up the commerce of the empire and to adopt a policy of mutual preference. In 1879, for example, Sir John Macdonald, then premier of Canada, with two of his principal colleagues, Sir Leonard Tilley and Sir Charles Tupper, actually made "a proposal for a reciprocity treaty with England" while on a visit in London. They found, however, in the phrase of Sir John Macdonald, that "no English statesman has yet mustered courage to take up the question." Not less insistently has the movement for preference been urged by statesmen of the other dominions. The attitude of Australasia was revealed at the conference of 1887 in the speeches of Sir Henry Parkes, Mr. Deakin, and Sir Samuel Griffith. In the judgment of Mr. Deakin the preference proposal constituted "one of the best and one of the few means of drawing closer the bonds of unity and increasing the solidarity of the empire." With such views, Mr. Hofmeyr and other representatives of South Africa have been in hearty agreement. Cecil Rhodes, also an ardent advocate of preference, urged, in a communication to Sir John Macdonald in 1891, a united effort in behalf of a system of preferential trade within the empire.

Such views, however, have not been held exclusively by dominion statesmen. Lord Milner and Mr. Balfour have advanced the cause of preference, so vigorously championed by Mr. Chamberlain. Mr. Balfour, speaking at Haddington in October, 1911, declared that "the disintegrating force of tariffs must in no unduly extended period have fatal effects upon the unity of the British Empire," unless some administration, recognizing the possibilities and dangers of the situation, succeeds in bringing the "colonies into a commercial system as well as into a system of defense."

Lord Milner has maintained that the root idea underlying preference is that "the scattered communities, which own allegiance to the British crown, should regard and treat one another not as strangers but as kinsmen; that, while each thinks first of its own interests, it should think next of the interests of the family, and of the rest of the world only after the family."

Colonial ministers have indicated the general lines upon which they are prepared to move toward inter-imperial reciprocity. They stand opposed to any proposal to establish free trade within the empire, or a uniform tariff throughout the empire. However desirable free trade within the empire may be from many points of view, it is at the same time impracticable owing to the necessity which would arise in the dominions of finding alternative sources of revenue. It was pointed out at the colonial conference of 1907 by Sir Wilfrid Laurier, Mr. Deakin and others that according to the then latest revenue returns, Canada was raising over half of her total revenue through the customs, while in the other dominions customs receipts formed from one-fifth to one-third of the total revenues. Similarly, a uniform tariff policy for the empire has been deemed impracticable inasmuch as "no colony would ever surrender the right to control its fiscal policy." Sir Wilfrid Laurier has declared that "nothing could be more detrimental to the existence of the British Empire than to force upon any part of it, even for the general good, a system which would be detrimental locally or might be considered to be detrimental locally." For these reasons, the imperial *zollverein* idea broached by Mr. Chamberlain in 1896 was abandoned in favor of a system of imperial preferences.

Before the outbreak of the European war, all the self-governing portions of the empire, excepting alone the United Kingdom and Newfoundland, had built up a network of inter-imperial preferential arrangements. These two states were deterred by considerations of foreign trade. For example, Newfoundland, intent upon the American market for her staple export, fish, felt obliged to refrain from a policy which, however congenial to her Britannic sentiment, might prove inimical to her trade with the United States. While each of the other dominions had organ-

ized its tariff policy to meet its own economic needs, it had, at the same time, given an imperial sanction to its policy by granting to other parts of the empire as large a measure of trade advantages over foreign countries as was consistent with its own economic development.

The unwillingness of the United Kingdom to reciprocate the offers of preference made by the dominions has been based on the fact that the initiation of any scheme of reciprocal preference by Britain would necessarily involve the recasting of the British tariff on general tariff reform lines. Accordingly the proposed fiscal changes have consistently been rejected by the Liberal government. However, the Liberal statesmen have constantly asserted that there were alternative methods of bringing the empire together which involved no change in the traditional trade policy. Thus at the colonial conference of 1909, Mr. Asquith, speaking on the preferential trade resolution, stated that while he "could not recommend anything in the nature of colonial preference by the manipulation of tariffs," there were many other ways in which it was not only "the interest but the duty of the imperial parliament to promote the commercial interests of the rest of the empire." In his speech on the same resolution, Mr. Lloyd-George declared that "the question of preferential tariffs looms so large on the political horizon that its friends may lose their sense of proportion, and think that every alternative proposition is too insignificant to waste time and thought upon."

Yet when the Liberal ministers attempted to apply their alternative proposals they found their path beset with difficulties. In the main their suggestions were found to be either too difficult of attainment, as for instance the scheme of the All-Red route of empire communication, or unacceptable to the dominions. The Fabian Society likewise set forth as its alternative to the policy of preference the creation of trading fleets to "ply between the provinces of the empire, and to carry empire goods and passengers, either free or at charges far enough below cost, to British Australasia and Canada." Mr. Bernard Shaw, who was entrusted with the task of drafting these suggestions for

the Fabian Society, declared that if the counsels of these alternative proposals were carried into effect "we shall not need to trouble about such makeshifts as tariffs."

To accuse the Liberal party of a lack of vision or of interest in the future of the empire is to gloss over the work of the recent imperial conferences and to base the indictment solely on the unwillingness to adopt the principle of tariff reform and imperial preference. From this principle the Liberals continued to dissent on the grounds that its adoption would involve the abrogation of many existent British commercial treaties with foreign countries, and that it would revive the practice of taxing the food of the British public.

While arguing that to adopt imperial reciprocity would cost the United Kingdom too dear, Liberal leaders have acknowledged the commercial benefits derived through preferential rates in the markets of the dominions. Mr. Lloyd-George, in admitting the beneficial effect of preference, has declared that "the Canadian preferential tariff has produced a marked effect upon our export trade to Canada," and that like results were to be expected from the establishment of preference in the sister dominions. "It is certainly to our mutual advantage," he added, "that everything within reason should be done to promote commercial intercourse between Britain and the colonies." At the same time the free trader has felt that it is a question whether the United Kingdom can afford to disturb its vast trade with foreign countries in order to promote a possible advance in her colonial trade, which is so much less. Thus he points out that normally one-third only of British exports go to British possessions. Of imports into the United Kingdom, the empire has supplied rather less than one-fourth during the past half century. We are further reminded by the Liberals that Britain has enjoyed most-favored-nation treatment from foreign nations—that is to say, their most favorable rates. If, under these circumstances, England were to establish preferential trading with her colonies, thus creating maximum and minimum tariffs, she doubtless would deprive herself of her most-favored-nation treatment in foreign markets. This, however, is debatable, inasmuch as imperial

tariff arrangements may legitimately be regarded as a matter of domestic concern.

Nevertheless the imperialist still continued to urge the adoption of preference on the ground that if British statesmen failed to act, the differences in policy of the several governments within the empire would be accentuated; that the dominions would be more inclined than ever to exercise the power of negotiating treaties in which their interests might not be slighted. In the budget speech of Mr. W. S. Fielding, the finance minister, delivered in the Canadian house of commons in April, 1903, there is a significant passage bearing on this question. "Putting aside other considerations," declared Mr. Fielding, "if the British government and people do not show any appreciation of the value of the preference, then, so far as the British government and people are concerned, they can not complain if we see fit to modify or change that preferential tariff." Reference already has been made to the independent negotiations on the part of Canada which led to the Franco-Canadian treaty of 1907, an event which will not be without its influence on future tariff transactions by the dominions. It is not inconceivable, therefore, that an extensive and complicated network of commercial treaties might arise which would prove inimical to imperial unity by reducing the preference enjoyed by the United Kingdom in the markets of the dominions and by setting up an extensive series of discriminations by foreign countries in favor of the dominions as against the United Kingdom.

To the assertion that the United Kingdom is not a tariff state and that, for that reason, it would have to undergo a complete overturn of policy in order to adopt preference, the imperialist may legitimately make reply that the British people have for years been paying customs duties on their tea, tobacco, spirits, and sugar. Thus in the year ended March 31, 1912, the revenue derived from customs duties levied on the imports of these four classes of commodities amounted to \$150,000,000. The per capita burden of customs taxation borne by the inhabitant of the British Isles has been normally not less than that of the American, notwithstanding the avowedly protectionist character

of the American tariff system. To be sure the British customs duties were arranged in accordance with the strictest tenets of the Cobdenite doctrine.

Although he proposed his system of imperial preference in the interest chiefly of empire unity and of the empire producer, Mr. Chamberlain did not overlook in his program the welfare of the British consumer. It will be recalled that Mr. Chamberlain, in his Glasgow speech of October 6, 1903, urged the reduction of several of the existent customs rates in order to offset the proposed duties. He wished to take off three-fourths of the duty on tea, one-half of the duty on sugar, and to effect a corresponding reduction on cocoa and coffee. At the same time, he proposed the placing of a duty on foreign wheat not to exceed six cents per bushel, and a tax of about 5 per cent on foreign meats and dairy produce. Importation of these products from the British dominions was to be duty free. A substantial preference was also proposed on colonial wines.

Underlying the entire tariff controversy, however, is the question as to how far the distinction is valid between economic and political considerations. It is a commonplace that the free trader has concentrated his attention on the growth of wealth on the assumption that with the increase of national wealth the integrity and welfare of the nation will automatically be cared for. The tariff reformer on the other hand maintains that while seeking the greatest measure of economic welfare the wider political considerations must not be neglected. He would consider the economic as but one of the several aspects of national life. He holds that economic conditions and political vigor react upon one another. "If we deliberately accept a one-sided economic development, we must be at pains," declares Professor Cunningham "to rectify the particular political weakness that is likely to ensue." Therefore, although the imperialist would perhaps admit that the adoption of protection and of imperial preference might carry with it some economic sacrifice, he nevertheless supports strongly such a policy on the ground that it would lead to greater imperial solidarity and to a more permanent basis of empire coöperation.

THE FREQUENCY AND DURATION OF PARLIAMENTS

JAMES G. RANDALL

University of Pennsylvania

When the British parliament passed a vote extending the life of the existing house of commons, whose duration would otherwise have terminated in January, 1916, their action attracted little attention and aroused but slight opposition. The forces of the empire, engaged in a desperate war, must not be dissipated by an appeal to the people, with the consequent evils of electioneering. Yet to the student of politics this action has a profound interest. One of the cardinal features of the legislation of 1911 had been the quinquennial duration of parliament—a provision which, as the debates show, was essential to the whole compromise. Yet in an unforeseen crisis, the legislature by its own resolution could provide an extension of its life, and thus postpone the date of accountability to the people. No political measure could furnish so striking a test of the flexibility of the British system, its adaptibility to emergencies, and its reliance upon a practically omnipotent legislature.

In this paper we shall trace the principal statutes which limit the parliamentary term and the intervals between parliamentary sessions. There are five such laws, each bearing a date full of significance in English constitutional history. The first three statutes, passed in 1641, 1664, and 1694, were triennial acts, though in different senses; the fourth statute, passed in 1716, was the familiar septennial act under which parliaments were so long regulated; the last permanent legislation on the subject was the parliament act of 1911 fixing a five-year maximum duration, and it still remains law though temporarily suspended in 1916.

A search of early English law reveals an ancient liking for annual parliaments. By a statute of 1330 it was provided "that

a Parliament shall be holden every year once, and more often if need be."¹ The same provision was reenacted in 1362. Although these laws were not strictly enforced, yet they served to establish a tradition in favor of frequent parliaments, and in the debates concerning the later acts, as well as in the statutes themselves, we find frequent reference to the "ancient laws and customs."² Many an English statute has been roused to life after lying dormant for centuries, and many laws which have long been dead letters may be used as potent arguments in a time of heated discussion. It was so with regard to the old ineffective laws concerning the frequency of parliaments; hence they deserve in this study at least a passing notice.

To explain the unusual provisions of the triennial act of 1641, we must recall the situation confronting the king and the two houses when the Long Parliament began its remarkable career.³ The significant thing was not merely that royal abuses impossible to English forbearance had gone unchecked during the eleven years of personal rule on the part of Charles I; not merely that ship money, forced loans, and other preposterous schemes had displaced constitutional taxation; that the church establishment under the absolutist Laud was confronting English individualism and the growing religious sense with the menace of uniformity and the exaltation of the formalities of worship; that foreign affairs had been bungled, while Scotland and Ireland had been bitterly antagonized. The important thing was that in the mind of the average parliamentarian these outrages were asso-

¹ 4 Ed. III, c. 14. The quotation comprises nearly the entire statute.

² 36 Ed. III, c. 10.

³ The Short Parliament, which met in April, 1640, had been abruptly dissolved after three weeks of bickering with the king over grievances. In a lengthy declaration justifying the dissolution, the king complained of the "undutiful and seditious carriage" of the parliamentary leaders, denounced their manner of bargaining and contracting for the remedy of grievances by refusing supplies, and expressed a deep repugnance towards their insistent demands for reducing the revenues and curtailing the prerogatives of the crown. This speech of the king serves as a fair statement of the vital issue between him and the parliament. *Parliamentary Debates*, II, p. 573.

ciated with a long intermission of parliament.⁴ Over and above the measures of specific reform, such as the acts denying the royal power to levy tunnage and poundage, abolishing the court of the star chamber and the high commission, forbidding ship money, restricting the royal forests and doing away with the distraint of knighthood, there was a demand for a general measure which would still further tie the king's hands by preventing the recurrence of a like season of unrepressed royal control. It was exactly with this purpose in view that the triennial act, designed to insure the automatic meeting of parliament at stated times, independently of the king's will, was passed.

This act "for the preventing of inconveniences happening by the long intermission of parliaments"⁵ recited in the preamble that by the "laws of the realm"⁶ parliament ought to be held once a year for the redress of grievances; that the appointment of the time and place for these sessions "hath always belonged as it ought to His Majesty and his royal progenitors," and that mischiefs result from the infrequent holding of parliaments. To secure frequent sessions rigorous measures were accordingly prescribed.

If, by prorogation, adjournment, or dissolution, parliament should fail to meet before September 10 of the third year after the close of any session, then the lord chancellor and the lord keeper of the seal were required to issue the necessary writs of election to the boroughs, cities, counties, etc., "without any further warrant or direction from His Majesty, his heirs, or suc-

⁴ As to the English abhorrence for an intermission of parliament, we may note the practice by which the same royal proclamation dissolves one parliament and summons its successor, the king, with the advice of his ministers, determining the dates of the dissolution and the next assembling. On this point Frederick Harrison writes: "The mediaeval rules about dissolutions and elections, with the obsolete jealousy of the crown which forces both into one royal proclamation, cause nothing but trouble and serve no useful end. The superstition that the British constitution, like nature, 'abhors a vacuum,' and insists on the formula—*Le Parlement est mort—Vive le Parlement!*—is hardly worthy of the twentieth century." *Realities and Ideals*, p. 259.

⁵ The act is dated February 15, 1641. *Statutes of the Realm*, V. 54; 16 Car. I, c. 1.

⁶ The reference here is to the acts of Edward III's reign, above mentioned.

cessors." These officers were to promise on oath to issue the writs. A failure to do so, besides "incurring the grievous sin of perjury," carried with it the penalty of removal from office and such other punishment as parliament might inflict.

In case the lord chancellor and the lord keeper should fail to issue the writs, then this function might be performed by any twelve peers meeting in the old palace of Westminster, in which case the writs should be "attested under the hand and seals of twelve or more of the said peers." The clerks of the petty bag and all other clerks whose duty it was to prepare election writs were required under penalty to do so at the command of the lords so assembled. Writs so prepared were to be of equal force with those issued under the great seal of England, and messengers were required under penalty to deliver the writs as directed.

In the event of the failure of the peers to issue the summons, then the sheriffs were to proceed with the elections, and finally as if to cover every human contingency, the act provided that if the sheriffs should fail to call the elections, then the freeholders of the counties, the masters and scholars of the universities, and the citizens and others having suffrage rights should proceed to hold elections as usual without further warrant, and their returns should be accepted as official.

No parliament was to be dissolved or prorogued within fifty days of its meeting without the consent of the king and the two houses. Neither house was to be adjourned within fifty days without its consent. All the parliaments assembled under this act and all members thereof were to have all the "rights, privileges, jurisdictions and immunities" possessed by parliaments summoned by writs under the great seal of England.⁷

The above are the provisions of the triennial act in its final shape. We may now turn to the story of its passage.⁸ On December 24, 1640 Strode introduced in the commons a bill for

⁷ Note that the act did not provide for triennial elections, nor did it limit the duration of parliament. It was concerned with the frequency of parliamentary sessions.

⁸ *Commons Journal*, II, pp. 58, 60, 70.

annual parliaments.⁹ On the 30th it was referred to a committee including Strode, Pym, Hampden and Cromwell, and in the committee stage the bill was changed so as to provide for triennial instead of annual parliaments. At the time of its passage in the commons, (January 20) the bill joined hands with a revenue measure for the relief of the king's army in the north—its companion for the remainder of the journey through parliament. This combination of money grant with constitutional redress was habitual with the parliaments of this troubled time.

While these bills were under consideration in parliament, the king, evidently worried because of the radical measures which the leaders were undertaking, commanded both houses to come to him at Whitehall and lectured them regarding the "distractions of the government." After referring to certain dangers which needed attention, and declaring his purpose touching some of the measures then pending, he discussed briefly two proposed laws to which he could not assent, the denial to the bishops of a voice in parliament, and the triennial bill. Having disposed of the question of the bishops he continued:¹⁰

"There is but one other rock, and that not in substance but in form, yet that is so essential that except it be reformed it will mar the substance. There is a bill given for frequent parliaments; the thing I like, that is, to have often parliaments, but to give power to sheriffs and constables and I know not whom to do my office, that I cannot yield unto. But to show you that I am desirous to please you in forms which destroy not the substance I am content you shall have an act for this purpose, but so reformed that it neither intrench upon my Honor nor that inseparable right of the crown concerning parliament."

After this lecturing the houses resumed their work, and so far as the triennial bill was concerned the speech had practically

⁹ This bill originally provided that if in every year the king had not issued writs for the elections before the first Tuesday in Lent, the returns were to be made without the usual intervention of the crown. This would have meant annual elections, as well as annual parliaments, and Charles would never have consented to such a measure. See Gardiner, *History of England from the Accession of James I to the outbreak of the Civil War, 1603-1642*, IX, pp. 252-253.

¹⁰ *Parliamentary History*, IX, pp. 170-171. (The speech is dated January 25.)

no effect except perhaps to induce a greater degree of care in order to secure the royal assent. The companion bills, slightly altered in the house of lords, were submitted to the king on February 15, backed by a deputation from both houses urging his approval.¹¹ The curt response was that the king's pleasure would be made known on the morrow. Accordingly, on the 16th, the king came to the house of lords, and "being seated on his throne, the lords in their robes, and the commons with their speaker in attendance," the title of the triennial bill was read and the king briefly announced his assent.¹² His remarks indicated that he regarded this action as a gracious concession.¹³ He expressed trust in the parliament, but his mind was evidently distressed with fears for his prerogative, and his reluctant assent had no more than a merely formal significance. Even so, the passage of the act was made the occasion of elaborate celebration. The two houses sought an audience with the king that they might express their thanks, and were received in the banqueting-house at Whitehall for the purpose. A flattering vote of thanks was read,¹⁴ and the passion for celebration was gratified by bonfires and the ringing of bells throughout the city. How these marks of popular rejoicing must have affected Charles we can only imagine.

Such were the main incidents connected with the passage of the triennial act of 1641. Its purpose is apparent. The revolutionary Long Parliament with the king at their mercy and with a burning sense of abuses long unchecked, proceeded to establish

¹¹ *Commons Journal*, II, pp. 85-86.

¹² *Parliamentary History*, IX, pp. 178-182.

¹³ Charles's conciliatory attitude can hardly be regarded as anything more than an indication of his helplessness. He was too much of a Stuart to acquiesce in so radical a measure without extreme reluctance, yet his position was so weak that at least temporary conciliation was the only course possible. It is interesting to compare this rather complacent speech of Charles with his vigorous proclamation in 1629 on the memorable occasion of his dissolution of parliament. Then he had declared: "We have showed by our frequent meeting our people our love to the use of parliament; yet the late abuse having for the present driven us unwittingly out of that course, we shall account it presumption for any to prescribe any time with us for parliament." There is no reason to believe that the king's intentions, as indicated by this speech, had been altered by 1641.

¹⁴ *Commons Journal*, II, p. 87.

such limitations of the royal prerogative as would make the house of commons the supreme authority in England. To this end the very process of summoning parliament was made independent of the king. The only step which was still needful to make secure the supremacy of this audacious parliament (a step, however, not comprehended within the legitimate motives behind the triennial act), was taken in May 1641, when it was enacted that the existing parliament should not be dissolved or prorogued without its consent.¹⁵ Control thus passed completely into the hands of the leaders of the commons, and the basis for a new tyranny—the tyranny of a parliament under a military dictator—was laid.

For twenty-three years the triennial act of 1641, with its guarantees of parliamentary independence, continued as law. The fact that its extreme provisions were never put into operation was due to the revolutionary character of the times. With the Restoration, however, the government of England by king, lords and commons was reinstated, and royalty in the abstract aroused enthusiasm among the majority (at least) of the Cavalier parliament.¹⁶ Hence the very thought of a measure so derogatory to the royal prerogative as the triennial act remaining on the statute-books was offensive. Furthermore, the act belonged to the "age of heroics," to use Fletcher's apt phrase, whereas England had now passed into the "age of common sense."¹⁷

¹⁵ 16 Car. I, c. 7.

¹⁶ The ultra-royalist character of Charles II's Long Parliament should not be overemphasized. According to the important Anglican writers of the period, as for instance Clarendon, the insignificance of the opposition in this "cavalier" and "servile" parliament would seem a plausible justification for many of the extreme measures passed, particularly against non-conformists. But taking this view we are at a loss to explain a peculiar fact revealed in the records—namely, that the votes on all the important government measures show a strong opposition which at times exceeded a third of the total membership of the commons. For an example of Clarendon's reference to the numerical strength of the Presbyterian party, see Clarendon's *Life* (Oxford ed., 1759), p. 153, and compare W. C. Abbott, *The long parliament of Charles II*, *English Historical Review*, XXI, pp. 21-56.

¹⁷ C. R. L. Fletcher, *An Introductory History of England, 1660-1792*, pp. 1-2.

When the parliament convened on March 16, 1664,¹⁸ a speech from the throne warmly recommended to them the repeal of the triennial act. The king was surprised that parliament had not considered the "wonderful clauses" in the bill, "which passed in a time very uncareful for the dignity of the crown or the security of the people." "I pray, Mr. Speaker," said he, "and you gentlemen of the house of commons, give that triennial bill once a reading in your house; and in God's name do what you think fit for me and yourselves and the whole kingdom. I need not tell you how much I love parliaments; never king was so much beholden to parliaments as I have been; nor do I think the crown can ever be happy without frequent parliaments. But assure yourselves, if I did think otherwise, I would never suffer a parliament to come together by the means prescribed by this bill."¹⁹

In these words, which we know to have had great weight in the parliament, we can see the principal motive for the repeal—namely, the desire to save the royal prerogative, and to fulfill Charles II's wish. Another motive, however, was shrewdly hinted at in this speech. Some, said the king, had fancied by a "computation of their own upon some clause in the triennial bill, that the present parliament was at an end some months since." The Cavalier parliament in the spring of 1664 had been in existence for three years, and the impression seems to have been widespread that according to the triennial act it must terminate at the end of its third year. This was clearly a miscon-

¹⁸ An unsuccessful attempt to effect the repeal was made in the first parliament of Charles II. On April 3, 1662 the proposition for unconditional repeal was discussed, and a repeal bill was ordered to be brought in, a committee of three being directed to prepare the bill. The only open opposition was a vigorous speech in the commons by Vaughan, who later became speaker of the lower house. He was surprised at the haste with which the repeal was being rushed through. The triennial act seemed to him salutary, and the "non-sitting of parliaments" would, he feared, produce mischievous results. In place of an unconditional repeal he would propose a compromise bill which would retain the provision for triennial parliaments, but remove such clauses in the existing act as were thought to be disrespectful to the king. The suggestion was not acted upon at the time, and the session closed with the triennial act still nominally in force. *Commons Journal*, VIII, p. 395; *Calendar of State Papers, Dom.* 1661-2, p. 330.

¹⁹ *Parliamentary Debates*, IV, pp. 290-291; *Lords Debates*, I, pp. 67 fol.

ception; the act provided that the interval between parliaments should be no longer than three years, but there was no clause restricting the life of a parliament to three years. No parliament under existing law was liable to dissolution as long as the king lived, unless he chose to dissolve it. The fact, however, that the wrong impression existed in the popular mind made it seem more necessary to repeal the law. Such a misapprehension need not be a source of wonder when we reflect that so famous a writer as Hallam falls into the same error in his discussion of the triennial act.²⁰

The repeal bill proceeded through parliament with only slight opposition.²¹ It reached the first reading in the commons on March 23, and passed on the 28th; the lords agreed to it on the 31st, and it received the royal assent April 5.²² At the time of its commitment the commons resolved to caution the committee

²⁰ Hallam, *Constitutional Hist.*, I, p. 515. Fletcher, (*Introductory Hist. of Eng.*, III, p. 20) a careful though vivid writer, in stating that the triennial act was repealed in 1664 "in order to prevent the necessity of a *new* parliament being called every three years" fails to add that this involved a misconception of the provisions of the act of 1641. An act may be "triennial" in several senses. It may provide triennial elections with or without annual parliaments, or it may fix a maximum triennial duration, or it may simply set a three-year period as the longest interval between parliaments. It was the last of these courses that was followed in the triennial act of 1641. It did not require a new parliament every three years. It dealt not with the duration of parliaments, but merely with their frequency.

²¹ The debates are not reported in Hansard, nor in Chandler's *Commons*, and do not seem to have been memorable. According to Pepys there were many in the commons displeased with the bill, though they dared not say much. By the same authority we learn of three vigorous speeches against the bill. Mr. Prin compared the bill to "the idol whose head was of gold and his body and legs of different metal," and it cannot be denied that the measure contained contradictory elements. Sir Richard Temple spoke "very discontentful words in the House about the bill." Also Vaughan, who in 1662 had opposed the repeal, now declared himself "in a speech of an hour and a half with great reason and eloquence against the repealing of the bill . . . but with no success." There are indications that under the surface there ran a rather strong current of opinion against the bill. On the day of its passage Pepys exclaims: "But Lord, to see how the best things are not done without some design, for I perceive all these gentlemen that I was with today were against it." He then suggests that it was passed to satisfy the king, "and should he demand anything else, I believe they would give it him." Pepys, *Diary*, March 26, 28, 1664.

²² *Commons Journal*, VIII, p. 537.

"that there be no clause in the bill of coercion on His Majesty for the calling of parliaments, other than there is for the execution of other laws."

That the repealing statute²³ was itself a measure for triennial parliaments (thus adhering to the central purpose of the original act) is shown in the title which read: "An act for the assembling and holding of parliaments once in three years, at the least, and for the repeal of an act . . . for the preventing of inconveniences happening from the long intermission of parliaments." The preamble²⁴ declared that the act of 1641 was "in derogation of His Majesty's just rights and prerogative inherent to the imperial crown of this realm, for the calling and assembling of parliaments, and may be an occasion of manifold mischief and inconvenience and much danger to the peace and safety of His Majesty and all his liege people of this realm." After declaring the repeal, the statute continued, as if addressing the king: "Within three years after any parliament, your Majesty (heirs or successors) *do issue out your writs* for the calling of elections to the end that there may be a frequent calling, assembling and holding of parliaments once in three years at the least." The mild expression "your Majesty do issue out your writs" contrasts beautifully with the vigorous wording of the original statute.

For this easy compliance of his parliament the king was highly grateful. "Every good Englishman," said he, "will thank you for it. For the act you have repealed could only serve to discredit parliaments and to make the crown jealous of parliaments and parliaments of the crown, and persuade neighbor princes that England was not governed under a monarch. It could never have been the occasion of frequent parliaments." Continuing, he pledged himself to be "not an hour the less without parliament"²⁵ for the act of repeal. In his concluding outburst of

²³ 16 Car. II, c. 1.

²⁴ Lyddal, in the debate on the septennial bill in the commons, referred to this as a "very remarkable preamble." *Parliamentary Debates*, VII, p. 311.

²⁵ This is the reported wording. The king probably meant to say the very opposite. Chandler's *Commons*, I, pp. 75-76.

confidence he declared: "I am confident that you and I who agree in the end will never differ in the way."

One other point in connection with the repeal remains for our notice. The sequel to the act throws an interesting light on the sincerity of Charles II's speeches. The king's assurance that parliaments should be no less frequent because of the repeal might mean a good deal or it might mean nothing. In Charles's mind it probably represented no binding pledge, but to the parliament it must at least have signified that the king could be relied upon to carry out the mildly expressed mandate for issuing writs after three years' intermission. As a matter of fact during the last four years of his reign Charles ruled without a parliament. In this transitional period the relation between crown and parliament was not clearly fixed, hence this overriding of the statute was tolerated. The royal prerogative still represented an actual power.

When the duration of parliament was next altered, the revolution had brought its constitutional changes, and parliament was now supreme. The triennial act of 1694 followed no extreme course; it neither yielded to nor attempted to override the king's will, but manifested a temper more in keeping with the normal principles of English law.

By glancing at the party divisions of William III's reign we observe that the Whigs and Tories were not clearly defined parties, but each was split into factions. Both had united, though with different motives, to bring about the revolution. The issues following close upon the revolution were such as to cause a shifting of party lines and the controversies between Whigs and Tories were at times less significant than the differences which arose within the parties. The careers of such men as Marlborough and Halifax illustrate well the ease with which public men of the time shifted their political allegiance.

It was to the Whigs that William at first looked for support. They had been responsible for the successful resistance to James II, and had made possible the enthronement of William. It was no part of their program, however, to strengthen the royal prerogative. Above all their party creed called for the preserva-

tion of the constitutional theories established by the revolution, and this meant the supremacy of parliament. This fact was well revealed by the attitude of the Whig majority of the Convention parliament of 1689 on the mutiny act. In order to make parliament supreme the authorization to use the power of court-martial over the army was limited to one year, so that annual parliaments should become necessary for the yearly renewal of the grant. Appropriations were similarly limited, and since the revolution these two "grants" have been annual.

The problem of preventing a long intermission of parliament had now been solved. By the device of the mutiny act and the annual grant of supplies there was quietly added to the body of English constitutional principles the rule that parliamentary sessions must henceforth be annual. No longer need the country fear such an interruption of the legislative function as that which had so exasperated the people during the time of Charles I, and which to a less degree had menaced popular liberty under Charles II. Another problem of perhaps equal importance, however, was still to be solved—how to prevent a king from retaining a parliament to his liking long after it had ceased to be in harmony with popular opinion. Not the interval between parliaments, but the length of life which should be allowed to a single parliament, was the point to be determined. The fact that in each case the laws are referred to as "triennial acts" may be somewhat misleading unless this distinction is understood.

William's second parliament, which met March 20, 1690, was composed chiefly of Tories. The division between the parties was so close, however, and there was so little stability in their relative strength, that a few absences, or the failure of a few proxies, might at any time turn the scales one way or the other. The Whigs as a body were less in sympathy with the king than they had been earlier in the reign, and were sure to take advantage of an opportunity to limit the prerogative. The Tories were divided between the courtiers who stuck close to William and the opposition Tories, among whom Halifax and Mulgrave were conspicuous leaders. There existed, moreover, a hostility between the two houses which seriously affected legislation, and

led to votes which could not at all be explained with strict reference to the merits of the questions involved.

To these complications, which might easily give an unexpected turn to such a piece of legislation as the triennial bill, there was added another element, namely the place bill. Since the king's influence depended largely on his power to bestow lucrative positions upon his supporters in parliament, the opposition had brought in a bill to prevent members elected after the first of the following January from accepting office under the crown. Certain of the tory supporters of William had argued in the debate against this bill that its passage would induce the king to continue indefinitely a parliament in which his pensioners for the time being constituted so powerful a factor. Unwittingly they thus committed themselves to the view that a prolongation of the existing parliament for such a period as the king might desire would be a serious grievance. Taking advantage of this admission, the opposition leaders presented²⁶ in the house of lords a bill limiting the duration of parliaments. The author of this bill was Lord Shrewsbury, the "most distinguished of those Whigs who were then on bad terms with the court."²⁷ Shrewsbury's bill,²⁸ of which the original draft is preserved, bore the vague and misleading title: "An act for the frequent meeting of parliaments."²⁹ As presented, it provided for annual in-

²⁶ January 12, 1693.

²⁷ Macaulay, *Hist. of Eng.*, (1856 ed.) IV, 274.

²⁸ Shrewsbury's bill had provided for annual parliaments, but this provision was given up, and instead it was enacted that a parliament should be held once in three years at the least. This change from annual to triennial sessions might seem to signify more than it does. It was probably thought that annual parliaments were sufficiently assured by the mutiny act, and the appropriation clauses in the yearly bills of supply. In that case, this clause of the triennial act was without much significance. See Hallam, *Constitutional History*, II, p. 202.

²⁹ *Historical Manuscripts Commission, Report*, XIV, pt. vi, pp. 299-302. The editorial comment in this report is worth quoting: "Comparing this bill with the acts of 1640 (new style, 1641) and 1664, it is interesting to note how the different senses in which each of them was 'triennial' reflects the prevailing political feeling of the time. The act of Charles I provided for the yearly holding of parliament, and was triennial in that it compelled the assembling of parliament if not summoned for three years. That of the Restoration left the king's

stead of triennial parliaments. A new parliament was to be summoned every year, and a compulsory clause required the lord chancellor to issue the writs in default of direction from the crown. After a thorough recasting in the committee of the whole house the bill provided that a new parliament should sit every three years, that there should be no compulsory means of summoning, and that a time be set for the existing parliament to terminate.

The progress of the bill through the two houses illustrates well the complication of motives which it aroused. Macaulay thus explains the practical unanimity among the peers in favor of the bill.³⁰

"William in vain endeavored to induce those peers in whom he placed the greatest confidence to support his prerogative. Some of them thought the proposed change salutary; others hoped to quiet the public mind by a liberal concession; and others had held such language when they were opposing the place bill that they could not without gross inconsistency oppose the triennial bill. The whole house, too, bore a grudge to the other house, and had a pleasure in putting the other house in a most disagreeable dilemma."³¹

hands free as to annual sessions, and was triennial in 'beseeching' him to summon parliament at least once in three years. The present bill, while reverting to annual sessions, is triennial only in limiting the duration of parliament to three years, thus being directed to an abuse of power not by the crown, but by parliament itself." *Ibid.*, preface, p. xv.

³⁰ Macaulay, *Hist. of Eng.* (1856 ed.), IV, p. 274.

³¹ One of the speakers in favor of the bill was Lord Halifax, a malcontent Tory who had formerly been one of the king's ministers, but had become identified with the opposition. "Is this a parliament, or a party?" he asked. "If the first, why fear another? If the last, is there anything to be said for it?" He considered it strange "to fear that for which the revolution was principally undertaken." The bill seemed to him the only remedy against two serious evils—the evil of governing without a parliament, and that of modeling a standing parliament. As to the argument that new experiments were unseasonable while the war lasted, it was baseless, for was not the true constitution of England to be called a new experiment? A war and a parliament which seemed agreed to continue one another furnished, indeed, a precedent for any king. In answer to the contention that the enactment of the bill would justify the scandal of corruption in the existing parliament, he declared that nothing would support the scandal so much as the continuation of the parliament. He ingeniously remarked

In the lower house the bill provoked great exasperation. The arguments against it touched not so much on the merits of the question as upon the special circumstances connected with the presentation of the bill at that time. These circumstances made the bill seem like a bitter dose even to those who favored its principles. The lords, whose seats would not be affected, were calmly originating a measure which would seriously encroach upon the authority of the commons. Not only were they usurping a function which the commons alone should exercise, but they were basely seeking popularity by a measure which would cost them nothing, but would cost the house of commons and the crown dear.

This resentment, however, could not outweigh the desire to pass a popular measure and to remove the scandal which hung like a cloud over the assembly. Supported by the Whigs as a body and by an element in the Tory party, the bill withstood the strenuous efforts of the court to defeat it. It passed the commons by a vote of 200 to 161 with an amendment extending the existing parliament to March 24, 1694. To this amendment the lords agreed, and the bill was presented for the king's assent.

William (though a monarch by parliamentary title, not divine right) was jealous of his prerogative, and the triennial bill was very distasteful to him. He delayed his decision, and besides consulting his ministers who advised in favor of the bill, he sent for the opinion of Sir William Temple,³² then living in retirement. Temple, through his secretary, strongly urged the passage of the bill, emphasizing the disasters of the Long Parliament which would never have taken place had such a law as the triennial act been in force. The arguments failed to move William, however, and just before the prorogation it was announced that the royal assent was withheld.

that in many minds the only reason for keeping this parliament would be that the government might not be put to the repeated expense of making new friends. (For the original notes, of which the above is a paraphrase, see Foxcroft, *Life and Letters of Saville*, II, p. 162.)

³² Temple's secretary, sent to present the statesman's views to the king, was Jonathan Swift, then a young man of about twenty-five years. As described by Macaulay, this is a fascinating incident in Swift's early life.

Two unsuccessful attempts during the year 1693-4 were made to carry the triennial bill.³³ The next session proved a more fortunate one for the measure,³⁴ for this time William gave his consent.³⁵ He was greatly depressed by the illness of his queen, who died soon after, and seems to have decided to conciliate the Whigs with whom he had been out of harmony for some years. A grant of tunnage accompanied the measure, hence Burnet suggests that the triennial bill was, by express bargain, the price of supply. It has been remarked as fortunate that the bill was presented at the time of the queen's illness, since this undoubtedly affected William's action, while at the same time it obscured the fact that he was yielding to necessity in giving his approval.

According to the act of 1694³⁶ writs were to be issued under the royal authority within three years at the farthest from the termination of any parliament, though as we have seen, the effective practice in favor of *annual* parliaments had now been definitely assured. No parliament was to continue longer than three years (this was the important provision) and the existing assembly was to be dissolved on November 1, 1696, or sooner if their Majesties should see fit. Another constitutional reform had successfully weathered the storms of parliamentary and royal opposition.

Perhaps no statute illustrates so well the extreme reach of parliamentary authority as the septennial act of 1716, passed under exceptional circumstances by a parliament which deter-

³³ In the first attempt, which was made in the commons, the bill, after passing its third reading without division, was defeated on the final vote by an unexpected temporary ascendancy of the opponents of the measure. Lord Monmouth (Whig) then brought in practically the same bill in the lords. It was passed and sent to the commons, but animosity against the patrician order prevailed, and the bill was rejected, 197 to 127. *Commons Journal*, X, p. 40. (December 22, 1693.)

³⁴ On November 19, seven days after the opening of the session, the commons ordered Mr. Harley to prepare a bill for the frequent meeting and calling of parliaments. It was carried with dispatch through both houses. Its first reading in the house of commons occurred November 22; its passage, December 13. On the 18th the lords gave it their concurrence without amendment, and it was submitted, together with the bill for the grant of tunnage, to the king for his assent. *Commons Journal*, II, p. 172, 187.

³⁵ *Commons Journal*, II, p. 193. (December 22, 1694.)

³⁶ 6 & 7 Will. & Mary, c. 2.

mined for the good of the country (and the interest of the Whigs) to extend its own term four years beyond that to which existing law entitled it, and for which it had been chosen by the constituencies. In the period from 1694 to 1716 party rivalry had been keen. During the greater part of the reign of Anne, the Whig power had been predominant, but there were frequent fluctuations in party strength, and neither party had been sure of maintaining control long enough to carry partisan measures of importance. The Whigs, as the special champions of the continental war and the Protestant succession, regarded themselves as the preservers of the honor and safety of England. At critical times the Tories had been strong enough to control the administration. Their half-hearted support of the war, their attempt to secure permanent power (*e.g.*, by the occasional conformity bill), and the known sympathy of many of them with the cause of the Pretender, greatly alarmed the Whigs and gave substance to the dread of Jacobitism and Toryism even after these names had ceased to stand for any considerable power in England.

The year of the accession of George I, 1714, marks a radical change in the course of party history in England. The Toryism of the seventeenth century practically died out with the advent of the first Hanoverian ruler, and a long period of Whig pre-eminence followed, which continued till the colonial and foreign policies of the eighteenth century gave rise to new issues. The first general election of George I's reign brought in an overwhelming Whig majority, and the two principal Tory leaders, Bolingbroke and Ormonde, fled to the continent to associate themselves with the Stuart pretender.

In the fall of 1715 occurred the ill-fated attempt to place the Chevalier de St. George on the English throne. The expedition had no foreign support whatever, and aroused but little enthusiasm in Scotland, and less in England. The Earl of Mar and the Pretender himself had none of the qualities of leaders, and the uprising was easily put down after two engagements at Sheriffmuir and Preston. Although the country showed little or no enthusiasm on personal grounds for George I, yet the can-

of the Protestant succession was dear, and Jacobite sentiment was weak and scattered.

This feeble and harmless rebellion was the occasion that gave rise to the septennial act. On April 10, 1716, the Duke of Devonshire introduced the bill for septennial parliaments in the house of lords.³⁷ He supported it by a speech in which he deplored the inconveniences of triennial elections which served only to "keep up party divisions and to raise and foment feuds and animosities in private families," which occasioned "ruinous expenses" and gave a "handle to the cabals and intrigues of foreign princes." "Though the rebellion was happily suppressed, yet," he declared, "the spirit of it remained unconquered, and seemed only to wait for an opportunity to show itself with more violence." The election of a new parliament, which according to the triennial act was not far off, was to occur at "the most favorable juncture the disaffected could expect," therefore he thought it "absolutely necessary to deprive them of it." We have in these few words of Devonshire a frank statement of the motives behind the septennial bill. Its purpose was to keep in power a ministry and a parliament which dreaded, no doubt with all sincerity, the danger of an election at a time when the country was so distracted as a result of the late riots and rebellion. The next election, to be sure, would not have come till a year from the following fall (1717) but it was thought necessary to foil the opposition by taking away at once an opportunity which they anticipated, and on which they might build hopes and plans.

Devonshire's bill (which is the same as the final statute except that the number of years was left blank) was nearly all preamble, and its enactments were reduced to a small paragraph. It is entitled,³⁸ "An act for enlarging the time of continuance of parliaments, appointed by an act made in the sixth year of the reign of King William and Queen Mary entitled 'an act for the frequent meeting and calling of parliaments.' " The preamble in enumerating the reasons for a new law closely followed the points of Devonshire's speech, and paid its respects to the "rest-

³⁷ *Parliamentary Debates*, VII, pp. 294-295.

³⁸ 1 Geo. I, *Stat.* 2, c. 38.

less popish faction" which was threatening public security. It was therefore to be enacted that all parliaments including the existing one were to "have continuance for *seven*³⁹ years," unless sooner dissolved by his Majesty.

The serious character of the bill is attested by the long and spirited debate which it aroused.⁴⁰ The supporters of the measure justified their position chiefly by denouncing frequent elections and playing up the danger of an approaching contest at the time. Elections caused great heats. "When party healths go round," declared the Earl of Ilay, "the naming of one general before another often produces a bloody quarrel; and, which is far worse, the sacred name of the church is impiously profaned in the streets and joined with treason." The bribing of corporations and the subjection of the constitution to the caprice of the multitude were rather inconsistently classed together as abuses characteristic of the existing system. It was urged that alliances would be formed with more confidence "if it was seen that the government was not precarious." The revolution, it was argued, was only temporarily checked, the Jacobites were as insolent as ever, and England must at all hazards be saved from the clutches of this monstrous popish faction.

Those who spoke against the septennial bill rested their case chiefly on constitutional grounds, and the weight of real argument was clearly on their side. Such a measure, they contended, would overthrow the constitution. The house of commons would cease to represent the people, and instead of allaying the rebellion the act would rivet the disaffected in their prejudices against the government. If so radical a remedy were applied because of a slight rebellion, then there could be no guarantee that the same

³⁹ Filled in by the lords after debate.

⁴⁰ Upon the question of commitment the lords debated for five hours, and another debate of two hours arose when the bill was reported from committee. The Earls of Dorset and Ilay and the Duke of Newcastle gave the most significant speeches for the bill, while Lords Trevor, Buckingham, Aylesford and Nottingham opposed the measure. *Parl. Deb.*, VII, pp. 299-307. After the bill passed the upper house some of the Lords who dissented from its provisions presented a written protest, setting forth the reasons for their opposition. *Ibid.*, p. 306. In the house of commons the most notable speech was that of the Tory Shippen, against the bill. *Ibid.*, pp. 312-321.

means should not be advanced later to justify a still further extension of the rule of the existing parliament. Experience showed that long parliaments were pernicious and subversive of liberty, whereas the triennial act afforded to the people the opportunity to remedy the abuse of corruption. To pass the bill would be to imply that the gentlemen of Great Britain were not to be trusted in a new election, and for the commons to accept such a bill from the lords was plainly inconsistent with their honor. The only authority of the existing parliament was derived from the triennial act—a measure secured as a product of the revolution, a concession from William to his subjects which ought not to be repealed. The existing ministry, moreover, so far from being the object of trustful care, should be jealously watched.

It is quite common in modern parliamentary bodies for a lengthy debate to produce little effect on the final vote. The motives of the speakers prompt the arguments, especially where personal and party interests are involved, whereas the supposed purpose of having a deliberative body is, in some way, to allow arguments to affect motives. The final votes on the septennial bill (69 to 36 in the lords; 264 to 121 in the commons) showed little evidence of being based on intelligent deliberation. Most of those who favored the measure were officers in some capacity under the crown.

In spite of the grave apprehensions aroused at the time of its passage, the septennial act remained law for nearly two centuries, and the longer parliamentary term has been amply justified.⁴¹ The real effect of the measure was to produce a great irregularity in the duration of parliaments, and the times of holding elections. Here, as in so many other departments of the English system,

⁴¹ An unsuccessful attempt was made in 1734 to repeal the septennial act. Aside from this the opposition to the measure has been insignificant. One of the demands of the Chartists was for annual parliaments, *i.e.*, annual parliamentary elections. Disraeli in his early career favored triennial parliaments. "I wished to break the strength of the Whigs by frequent elections, and by frequent appeals to a misgoverned people; therefore I advocated a recurrence to those triennial parliaments which it was once the proud boast of the Tories to advocate." Monypenny, *Life of Disraeli*, I, p. 283.

usage has supplemented the written law, and elections have been set, not by the termination of parliament by statute, but by the issues of the time which have created genuine occasions for appeals to the nation.

It was during the crisis of 1910-11 in British politics that the septennial act was overthrown and a new maximum limit of five years established. The program of the dominant party in this whole controversy over the parliament bill may well seem extraordinary to the student of politics who recognizes in the English people a high capacity for political development. Here was a radical alteration of the British constitution, a step towards single chamber legislation, opposed by an important element in the nation both because the measure itself was repugnant to them, and because the deal of the ministry with the Irish Nationalists made it certain that the new parliamentary device would be used to enact a party policy—home rule. This constitutional alteration was not passed in a strictly parliamentary way, but was forced through under the threat to create enough peers to pack the upper house with an artificial majority, a procedure which could certainly have no justification in a scientific parliamentary system. The measure itself, when once passed, rejected the perfectly logical program of reforming the upper chamber,⁴² abandoned the principle of a referendum, and set up the clumsy plan of overriding the lords' veto by three successive passages of a bill within two years. The intensity of the opposition to this revolutionary change, the stormy scenes which the government had to face, and the determined devotion of the "die-hards" who insisted upon resistance to the last ditch, gave evidence of the violent upheaval in political life which the parliament act occasioned. It is hardly to be expected that the new process of legislation will have any permanency, or even that its supporters will be pleased with the manner of its operation in practice.⁴³

⁴² In the preamble the ultimate purpose of reforming the house of lords was avowed, but this was an indefinite postponement of a policy upon which enlightened sentiment had been focusing for years.

⁴³ See A. L. P. Dennis, *The Parliament Act of 1911*. *AMERICAN POLITICAL SCIENCE REVIEW*, VI, pp. 194-215, 386-408.

The ministry could, of course, answer that the lords had ignored the well established limits on their power, that this "burial board of reforms" must no longer be allowed to thwart the popular will, that a permanently conservative and notoriously inefficient body of law-makers was a standing menace, and that so salutary an end might justify the most questionable means. Their position was markedly strengthened by their consultation of the people in the December, 1910 election—a shrewd move in Asquith's game—and they could well plead that the government was under a "mandate" to enact this constitutional reform. They could further show that there was no intention of abusing the power which the act would confer upon them. But even so, the unscientific manner of approach to their reform could not but be painful, and some concessions on their part would certainly be expected.

The shortening of parliamentary duration was a rather obvious concession which the Asquith government offered as a sort of palliative against the drastic provisions of the parliament bill. It was included by Campbell-Bannerman in his draft of 1907, and was referred to by Home Secretary Churchill as a "necessary and inseparable" part of the reform. Now that the house of commons was to be freed from the absolute veto of the lords it was considered essential that the term of its members should be shortened in order to draw them closer to the electorate, lest they should "outstay their mandate."⁴⁴

In April, 1910 this policy of five-year parliaments was extensively debated as a part of the Asquith resolutions.⁴⁵ The opposition emphasized the ill effect of more frequent elections in increasing the power of the cabinet and the caucus as party agents, and in so enhancing the cost as to discourage candidates of slender means, but it was pointed out that even under the septennial act there was no security against frequent elections, and that the average duration since the reform bill had actually been slightly over four years. Some arguments were advanced in favor of fixity of tenure, establishing five years as a rigid par-

⁴⁴ Asquith, in 21 *H. C. Deb.*, 5th ser., c. 1749.

⁴⁵ 16 *H. C. Deb.*, 5th ser., cc. 1493-1526.

liamentary term, but this was aside from the question, and such a law would seem to be out of harmony with the essential character of the parliamentary system which allows for elections whenever political issues demand them. In general the debate was of minor significance, as many who normally opposed the government were content with this concession. When the resolution was put "That it is expedient to limit the duration of parliament to five years," the division showed 334 ayes and 236 noes.⁴⁶ Of course the vote at this stage served merely to place the Liberal party on record as favoring five-year parliaments as a feature of their new scheme.

In another year the Asquith resolutions had become the parliament bill. Though this measure contained a clause limiting the parliamentary term to five years, yet, in view of the sweeping power which the bill as a whole gave to the house of commons, this provision seemed an insufficient guarantee to some of the leaders of the opposition. Hence we find Lord Avebury presenting an amendment excluding from the new legislative procedure any bill to extend the maximum duration of parliament beyond five years.⁴⁷ By this amendment the house of commons would be prevented from prolonging its existence by its independent action. Avebury admitted the intention of the government to adhere to the five-year limitation, but doubted whether it would be able to resist the pressure of circumstances. In this connection he referred to an historic occasion when the house of commons and the army destroyed the house of lords—their next step was to prolong their existence indefinitely.

Though the government was not contesting this amendment, yet Lord Morley spoke squarely against it. The actions of the Long Parliament, he thought, passed in times of tremendous civil and military confusion, should not even be mentioned as a possible precedent. "You might as well quote Barebones parliament as a reason why there should be no parliament at all." He was surprised that the noble lord should suppose the house of commons so indifferent to self-respect and to popular opinion as

⁴⁶ 16 *H. C. Deb.*, 5th ser., c. 1526.

⁴⁷ 9 *H. L. Deb.*, 5th ser., cc. 6-7. July 3, 1911.

to prolong its own existence. He was afraid that the amendment could not be accepted.

The Unionist floor leader, Lord Lansdowne, in answering Lord Morley declared that His Majesty's governments were not always free agents, as on occasion they were expected to "toe the line." Might not a critical moment arise when, "not of their own free will, but under the coercion of their supporters," they might be induced to adopt a proposal of this kind? At any rate, if the noble viscount thought the thing so inconceivable, there would surely be no great harm in accepting the amendment without further to-do. The home secretary's statement that the shorter duration was an essential feature of the government's plan had put the thing on a pedestal of its own.⁴⁸ And would the noble viscount remember how completely any extension of the duration of parliament would modify the conditions of this bill? The prime minister had explained that under the quinquennial system the full advantages of the new parliamentary device were possible only for measures introduced during the first two or three years of a given session. But if the duration should become six or seven years, the whole basis of the settlement would be fundamentally altered.

After some further debating the amendment was agreed to, and the parliament act as finally passed not only declared that "five years shall be substituted for seven years as the time fixed for the maximum duration of parliament under the septennial act," but rendered this limitation unalterable by the exclusive action of the commons and the king. If self-denying laws may be regarded as safeguards, here was an effective check against any serious abuse of that ultimate omnipotence which the new legislation was conferring upon the lower chamber.

On January 31, 1916 the duration feature of the parliament act would first have become applicable, thus forcing a general election at a critical period of the great war, when the Irish crisis, the struggle over conscription, and the lack of conspicuous success in the conduct of the war were embarrassing the coalition

⁴⁸ 29 *H. C. Deb.*, 5th ser., cc. 999, 1094-1095.

government. Under the circumstances, a general election (automatically set) was not wished by any considerable political group. A truce in the conflict of parties had been declared, and Liberals, Unionists, Irish Nationalists, Ulstermen and Laborites were coöperating for the supreme object of winning the war. Besides a dread of the uncertainty and upheaval attending a political contest, there was the feeling that an election conducted in the absence of so vast a number of the voters would be unrepresentative.⁴⁹ That some sort of measure for suspending the operation of the parliament act would pass without substantial opposition was therefore to be expected.

At this point, however, a complication arose over a highly controversial measure of the Liberal party, viz., the plural voting bill, which had twice passed the House of Commons to be rejected each time by the lords. Had events remained normal, the Liberals could have carried their measure a third time in the same parliament, and it would thus have become law under the parliament act. But according to the "compact" of the coalition, "no controversial business should be pushed forward," while on the other hand, "nothing should be done to prejudice the interests of those who have been parties to former controversies."⁵⁰ Under this compact, the Liberals argued, the mere passage of

⁴⁹ The expedient of having the soldiers vote in the field seems not to have been considered at this time though it was debated in the following August. Many of the States, during our Civil War, had legislation on this subject. State constitutions often had to be amended as regards the manner and place of voting for state officers, but regarding presidential electors and congressmen the state legislatures could act. Either the ballot-box was taken to the soldier in the field, or someone in the home precinct cast the vote by proxy. Where there was no legislation on the subject, soldiers were sometimes furloughed to vote at home. Congress, of course, could pass a uniform law touching the matter as regards national elections, and indeed a provision permitting soldiers on duty on the Mexican border to vote in the November elections was presented this year as an amendment to the army appropriation bill, but the amendment failed, and absent soldiers may vote only where state laws permit it. On August 22, 1916, Lord Salisbury introduced in the British parliament a bill to permit soldiers at the front and in hospitals to vote, but the military leaders disapproved of the policy, and the government felt that the existing time was no occasion for such a fundamental alteration of the constitution. See J. H. Benton, *Voting in the Field, A Forgotten Chapter of the Civil War*. (Boston, 1915.)

⁵⁰ Lord Lansdowne in the House of Lords. 20 *H. L. Deb.*, 5th ser., c. 844.

time would work them injury as regards the plural voting bill, and a clause was therefore inserted (it should become a classic among the fictions of English law) providing that "section two of the parliament act, 1911, shall, in relation to any public bill passed by the house of commons after the passage of this act and during the continuance of the present parliament, have effect as if the session ended in September, 1914 and the session in which the bill is so passed were consecutive sessions."

This curious provision would make it conceivable, though perhaps not likely, that the bill to eliminate plural voting might become law during the life of the existing parliament. Voices of protest were emphatically raised, in parliament and out, at this "administering of oxygen to the plural voting bill,"⁵¹ but the Unionist leaders themselves (including Bonar Law and Lansdowne) agreed to it, and the clause was retained as a part of the parliament and registration act.

As to the length of the extension there was some vacillation. At first the cabinet planned to keep the existing parliament alive during the war and for a year and a half beyond its close. Then the idea grew of a twelve-months extension beyond January, 1916, while various other periods, both shorter and longer, were urged. As the debate waxed warm and criticisms (as for instance from the *Times* and Sir Edward Carson) fell heavily upon the ministry, the desirability of conciliation became apparent, and Asquith announced that an extension of eight months would serve as a reasonable compromise, and in this form the act passed.⁵²

⁵¹ For examples of such protests, see London Daily *Times*, Dec. 4, 1915, p. 9; Dec. 9, p. 9; Dec. 10, p. 9 and p. 12. For Carson's views, see *Times*, Dec. 13, p. 9.

⁵² Parliament and Registration Act. 1916, 5 & 6 Geo. V, ch. 100. 27 Jan. 1916. Section 2 of the Act continued in force the existing register of electors until parliament should provide special registers, or otherwise direct. The intention of the government was to provide special registers in time for the next general election, enabling soldiers and sailors to qualify and be allocated to particular constituencies. Provision was made in Section 3 for compensating Irish officers for temporary loss of emoluments. For the debates see 76 *H. C. Deb.*, 5th ser., cc. 1946-2028; 77, cc. 59-87, 520-536; 20 *H. L. Deb.*, 5th ser., cc. 819-850; 931-945.

The existing parliament would thus be kept alive until the end of September, 1916, but as a general election was not even then contemplated a further extension became necessary in August. Plans for altering the franchise to suit the principle of "fit to fight, fit to vote," and to allow for polling at the front were urged but wisely dropped, and an act was carried on August 23 which extended the life of parliament for seven months—that is, to the end of April, 1917. The franchise was to remain unchanged but a new register was to be prepared so as to preserve the vote for any electors within the country who might be absent from home on war duty. An amendment provided that if a dissolution should occur before the new register could be put into force the parliament elected on the old basis should not last longer than two years. In a significant speech Mr. Asquith "assumed" that a general election in time of war would be a calamity. Neither France nor Italy, he said, contemplated such a contingency, and neither ought Britain to do so.⁵³ This plainly indicated that another extension would be made if the war were still continuing in April. Throughout the debate the

⁵³ It may be of value to note recent action in other countries touching war-time elections. The parliamentary election of December 19, 1915 in Greece showed how unrepresentative an election (even in a neutral state) can be in the midst of a war. The followers of Venizelos absented themselves from the heavily-guarded polling places, and less than a third of the normal vote was cast. To avoid an election in 1916 in Canada, the British North America Act was recently amended so as to extend the term of the Dominion Parliament one year. This was done in response to an address from the Canadian to the British Parliament. (An Act to amend the British North American Act, 1867.—1 June 1916. 6 & 7 Geo. V, cap. 19.) In France there will be no elections either to the Senate or to the Chamber of Deputies until the close of the war. The law reads: Les opérations de revision des listes électorales pour l'année 1915 sont ajournées jusqu'à la cessation des hostilités. Pendant la même période et jusqu'à ce qu'une loi spéciale ait autorisé la convocation des collèges électoraux, il ne sera procédé à aucune élection législative départementale, communale ou consulaire. *Journal officiel de la république française*, Dec. 25, 1914, p. 9338. Furthermore in 1915, the elections of various local and colonial officers of the French government were suspended until a date to be set after the war. *Journal Officiel*, pp. 113, 2147, 2430, 3794, 7031. Moreover, in 1915, acts of the British parliament had been passed to render unnecessary the reëlection of members of the house of commons on acceptance of office (5 and 6 Geo. V, ch. 50), and to postpone elections of local authorities (5 and 6 Geo. V, ch. 76).

prime minister manifested indifference as to the length of the extension, but thought that some date should be fixed even though it might later be set aside.⁵⁴

At first sight the legislation of 1916 might seem an undoing of an essential feature of the parliament act of 1911, for the shortening of parliament had been intended as an offset to the increased power of the lower house. It is too early to conclude, however, that the permanent shortening of parliament ceases to exist as a safeguard. The emergency measures of the present year are but temporary, and serve not to override a safeguard, but to get rid of a hindrance. Moreover the lords, who by the Avebury amendment of 1911 had become the special guardians of this portion of the constitution, agreed to the extension, so that no menace of single chamber legislation seems to be involved.

In glancing over the acts we have studied, it is striking to observe how great constitutional changes have incidentally left their impress upon legislation touching the duration of parliament. During the violent upheaval of the Puritan revolution, when the whole constitution was being thrown into the scrap heap by the leaders of the parliament and the army, a triennial act was produced which, by its compulsory clauses, made the process of summoning parliament independent of the crown. In the full swing of the royalist reaction an obliging parliament repealed the obnoxious statute, adding a clause politely beseeching that parliaments be summoned at least once every three years. After the crisis of the Whig revolution had been faced and passed, and the popular will expressed through parliaments had been vindicated at the expense of the prerogative, the triennial act of 1694, with the reluctant royal consent and with a revenue bill as its companion, typified the new supremacy which parliament had achieved. These three measures were by-products of controversies that concerned the constitutional relations between parliament and the crown. In the reign of the first George, however, royalty was without force, while under the

⁵⁴ My chief source for this recent legislation is the London Daily *Times*.

fifth George royalty had long been reduced to the position of a "glorified rubber stamp," and England was, as Tennyson said, a "crowned republic." The acts of 1716 and 1911, therefore, did not concern the position of the king with reference to parliament, but the position of parliament in relation to the people and also to parties, for party government was now the controlling factor in public affairs. The septennial act, passed, as it were, under the party lash, and inspired by almost purely partisan motives, appropriately represented the dominant influence in modern politics. Then finally, the quinquennial provision of 1911, an important feature of a radical constitutional alteration, took into view the relation of lords to commons, and of party administration to the people, and registered an unwillingness to extend too far the authority of a party cabinet supported by an obedient following in the popular house. Though temporarily set aside in a world-shaking war, it is to be presumed that this measure still has vitality.

All such statutes are conditioned by the fundamental character of the English constitution, which, after all does not contemplate a strictly constitutional, but rather a parliamentary, government, inasmuch as no constitutional convention, (or similar authority representing the *state* as distinguished from the *government*), can interpose its will between the parliament and the people. As Mr. Asquith declared in 1911: "The moment you except from the omnipotence of parliament certain categories of legislation, that moment you are introducing of necessity an outside authority to determine whether or not any particular act of parliament is valid."⁵⁵ This is, in truth, the crux of the whole question. Whenever the constitution is to be altered, even as regards parliament itself, the agency for making the alteration is the parliament. Though in a sense the creature of the constitution, the parliament is also the creator and amender of the constitution.

⁵⁵ London Weekly *Times*, July 3, 1911, p. 8.

NEED FOR A MORE DEMOCRATIC PROCEDURE OF AMENDING THE CONSTITUTION¹

SEBA ELDRIDGE

That final legislative authority in this country is lodged in the letter of a constitution that is amended with the greatest difficulty, and with a supreme court which is entirely independent of electoral control has become a commonplace of political discussion.

To quote Professor Goodnow: "Acts of congress and of state legislatures are declared to be unconstitutional . . . because they cannot be made to conform to a conception of the organization and powers of government which we have inherited from the eighteenth century;" and Dr. Blaine F. Moore: "If we may judge from the decisions based on the due process clause in the fourteenth amendment and applying to the States, the court has it in its power to make the similar clause in the fifth amendment cover practically all federal legislation dealing with new problems concerning which there are few or no precedents. If the court does make this entirely possible extension of its power, then the legislation dealing with the more recent and pressing questions is under the control of the popularly inaccessible justices of the supreme court."

Both these quotations are from studies published before the adoption of the sixteenth and seventeenth amendments, but they are only a little less true now than then, as an analysis of the history of those amendments will show.²

A generation elapsed after the income tax law was declared unconstitutional before the amendment specifically authorizing

¹ A paper prepared for the annual meeting of the American Political Science Association, December, 1915.

² Much of the argument which follows is taken from an article by the present writer in *Equity* for July, 1915.

a tax of this nature was adopted. The law was passed in response to an overwhelming demand on the part of the country for a redistribution of taxation burdens as between the agricultural classes on the one hand, and the manufacturing and commercial classes on the other. The income tax was to provide the revenue which would be forfeited under the new tariff schedules that were demanded. Invalidation of the income tax law not only prevented this transfer of taxation burdens, but had a much more important result which has not been generally recognized. The period from 1895 to 1913, when the levy of an income tax was prohibited, was a crucial one in the country's industrial development. The relative status of agriculture and manufacturing was being defined. It was being determined whether we should be predominantly an agricultural or a manufacturing nation. Any change in the fiscal policy of the government was bound to affect industries of one or the other class. The income tax decision, by altering this policy, affected vitally and permanently the country's industrial development. The result is, we have today an essentially different organization of industry from what we would have, had the income tax law stood. We are less an agricultural and more a manufacturing nation because of that decision and the impracticability of speedily reversing it. This may be well, but it was not of our choosing.

Now Professor Seligman has demonstrated pretty conclusively that the term "direct taxes," around which the controversy over the law centered, was not intended by the framers of the constitution to prohibit the apportionment of taxes according to wealth as well as according to population. The word "direct" was introduced to settle the vexed question of representation and not any dispute over taxation. An erroneous interpretation of a constitution drafted before there were any railroads or any factory system was permitted to modify the whole future course of our industrial development! The reply to those who claim that the defeat of the popular will in this instance was only temporary, is that the measure invalidated in 1895 could not be reenacted in 1913, for that decision had done its work and no new income tax could undo it.

The adoption of the seventeenth amendment is just as flimsy a proof that the Constitution can be adapted to changing conditions, as should be obvious when we consider that not only was this amendment not adopted until eighty-seven years after it was first proposed, but not until long after sentiment was practically united in its favor, and the States had found extra-legal means of accomplishing the same purpose. The adoption of this amendment was, therefore, but little more than the formal ratification of an irregular procedure of electing United States senators by popular vote established in default of a regular constitutional procedure. It has the same sort of significance that the adoption now of an amendment requiring the President to be elected by popular vote would have. But, were it possible to measure the social results of the postponement of this change, we could not delude ourselves into the belief that in this second instance there had been no permanent defeat of the will of the people.

In our view it cannot be seriously maintained that features of a constitutional system which permit such defeats of popular purpose are to be supported by advocates of democratic government.

The same tortuous course taken by the sixteenth and seventeenth amendments probably awaits other reasonable proposals for change. Take, as instances, the two amendments favored by Mr. Taft, one providing for a national budget, the other for a single term for the President. Nothing can be more obvious than the impracticability of securing amendments of this nature. Congress would never consent to so great a diminution of power as an executive budget would represent, unless forced by an almost unanimous public opinion to do so; nor, in view of the President's great influence with congress, is it easy to imagine both houses of that body passing by the requisite two-thirds majority an amendment limiting his tenure of office to one term. Certainly a President who supported this change during his first term would be too saintly a character to remain long on this earth.

The truth is, when one more than one-third of one house of

congress can prevent the proposal of amendments, and one more than one-fourth of the States can prevent the ratification of amendments that may be proposed, an obstructive minority rule in this matter is the fact, and not a constructive majority rule. This truth becomes pathetic, when the jurisdiction of congress or of the States is in question, and these creatures of the Constitution must pass on propositions to redefine their own functions.

Yet despite the obviousness of this situation, the National Association for Constitutional Government, the "anti" of the movement for a democratic amending procedure has the hardihood to assert that "it is yet to be demonstrated that there is any truly beneficial social reform that is prohibited or obstructed by the national Constitution!" The really tragic aspect of the situation is not that one or a number of reforms may be obstructed by the Constitution, but that the venerable document has, through the connivance of forces both sinister and sincere, gotten itself regarded as a sort of categorical imperative not to be challenged.

If it is with great difficulty that single amendments to the Constitution are secured, no way at all could be found of revising the Constitution as a whole, or substantial portions of it, should that be deemed necessary. Two-thirds of the state legislatures would never call for a convention in the identical terms that would be required for effective action; and particularly would they not call for a convention to propose a general revision of the Constitution. Apart from the fact that they would be too interested a party to favor a general revision, it could hardly be expected that, independently of each other, they should one by one, up to two-thirds their number, agree on a convention for general revision. It is too large a proportion of so great a number of independent bodies to require for the initiation of amendments wherein their own status would be reviewed and might be altered. It would be a bold congress that would propose a general revision or even a revision of considerable sections of the Constitution. Should any congress be disposed to do so, it would, like the state legislatures, be too interested a party to propose an impartial revision.

This question of general revision is far from being an academic one. From the standpoint of present public opinion on political and economic questions, there is the greatest need for a general revision of the Constitution. The doctrines of property rights and of states' rights underlie the entire Constitution, tie it together, make of it an organic whole. No one would deny, I think, that these doctrines would be revised were we now to draft a constitution. The far-reaching effects of such a revision would also be admitted. Yet under our present amending procedure, a genuine revision of those doctrines cannot be attempted. We are confined instead to a guerilla warfare for or against them, as seems to isolated individuals or groups to be desirable.

In the radical reconstruction of world politics now going on is to be found an even more imperative reason for demanding a genuinely representative control of our political development. Without it our country cannot play the rôle in this greatest of all movements which it should be both our duty and our privilege to play.

We can never be secure in a representative control of our political affairs without an electoral control of our constitutional policies. Could we be assured that the principles adopted by the supreme court would, for an indefinite period of time, meet with the sanction of public opinion, it would still be essential that a more dependable machinery be devised for giving expression to the will of the nation, for no one would claim, I think, that that body is so constituted as to guarantee for it a permanently representative character. Still less could it be claimed that the letter of a constitution drafted a century and a quarter ago when we were a small agricultural people, and with only a handful of amendments adopted since that time, will be representative of our multifarious political interests in the new era opening before us.

A more democratic procedure of amending the Constitution must be established. In the words of the committee on the federal constitution, "Control of the organic law by the people means the power to revise it in any way and to any extent they

desire. It means the power to amend the written Constitution, and the meaning of the written Constitution as judicially interpreted, in part or in whole as the people may determine. This will require a procedure of revision that will provide for the initiation and adoption of particular amendments as they may be required, without more delay than that needed for wise deliberation; and, when necessary, for recasting the Constitution as a whole. For the people to have effective control over the machinery of government, at least one process of revising the Constitution must be independent, so far as the proposal and ratification of amendments are concerned, of any organ or organs of government already constituted."

It need scarcely be added that any new procedure, to fulfill its purpose, must be such as to invite the fullest and freest discussion of fundamental political questions. Only thus can that inhibition of political thought of which Professor Zueblin speaks be removed.

AMENDING PROCEDURE OF THE FEDERAL CONSTITUTION¹

JACOB TANGER

Pennsylvania State College

PROPOSED AMENDMENTS SINCE 1889

The development of government on American soil presents, as one of its features, the embodiment in its fundamental law of provisions for its modification. The early colonial charters kept alive the fiction that a form of government once established was supposed by its creators to last forever.² Only the slow change of custom or the violence of a revolution could modify or destroy such a system of government, except, as in the case of the charters granted by the crown, a modification came as a consequence of the exercise of the royal prerogative.

In the Frame of Government drawn up by Penn and his colonists in 1683, appeared an amending provision for the first time in the history of written constitutions; and while all subsequent Pennsylvania charters contained a similar provision, the other colonial charters presented no method whatever for their alteration. Prior to the drafting of the Constitution of the United States, however, a method of amendment was embodied in the state constitutions of Delaware, Pennsylvania, Maryland, Georgia, Vermont, South Carolina, and also in the Articles of Confederation.

Mindful of the fact that with the lapse of time and changing conditions would arise a demand for altering their work, the framers of the Constitution of the United States made pro-

¹ A paper prepared for the annual meeting of the American Political Science Association, December, 1915.

² Charters of Mass. Bay and colony of New Plymouth granted by Charles I, 1629; Charter of Mass. Bay granted by William and Mary, 1691. F. N. Thorpe, *American Charters and Constitutions*, vol. III, pp. 1842, 1852, 1877.

visions in article V of our fundamental law, that congress by a two-thirds vote of both houses, or a convention called by congress upon the request of the legislatures of two-thirds the States, shall propose amendments which shall be valid as part of the Constitution, when ratified either by the legislatures of three-fourths the States, or by conventions in three-fourths the States.

The fact that over two thousand amendments to the Constitution were proposed during the first century of its history, as shown by Professor Ames, attests to some degree the wisdom and foresight of the framers in providing for the amendment of their work; but on the other hand, the fact that only fifteen of these were adopted, has hardly met the expectations of the framers themselves, and has caused students of our system of government to decry the method prescribed as so difficult as to make amendment possible only in times of great crises. Madison believed the method provided, "guarded against that extreme facility which would render the Constitution too mutable; and that extreme difficulty which might perpetuate discovered faults." Hamilton trusted that time would bring the work of the framers to perfection, and that the feeling of inconvenience must correct the mistakes into which they inevitably fell in their first trials and experiences in the balancing of a large State on general laws.

The same tendency to amend the federal Constitution prevailed during the first quarter of the second century; as has been shown to have existed during the first century of its history. That many changes in the form and also in the powers of the government have been contemplated, is apparent upon an examination of the almost one thousand proposals for amendment, officially presented in congress, during the period from March 4, 1889, to March 4, 1913.

Among the changes in the form of the legislative department of the government, one providing for the abolition of the senate and thus making congress a unicameral body, although proposed only once, is of interest. Propositions for changing the time of commencement and termination of the congressional

term and of the annual meeting of congress have been of more frequent occurrence than any other affecting congress as a whole, while the granting of representatives in congress to the District of Columbia, and the adoption of the English system of permitting members to occupy cabinet positions, have on several occasions been the subject of amendments proposed.

Efforts to fix in the Constitution the number of representatives in the house have been the occasion for the proposal of several amendments. The term of representatives has been a subject of much criticism; twenty-six amendments having been proposed providing for either a three or a four year term.

Amendments providing for qualification of electors of representatives, as well as the regulation of their election by the federal government rather than by the State have been urged on several occasions; in most cases, however, in connection with the efforts to secure the direct election of senators. Two amendments proposed embraced in their provisions the recall of representatives.

The senate is the only department affected by amendments during this period. By the adoption of the seventeenth amendment, the election of its members was taken from the state legislatures and placed with the people. Aside from the proposed amendments providing for the direct election of senators, few changes in the senate were seriously considered. Four amendments providing for terms of four and eight years, and two others providing for basing the States' representation in the Senate on its population, were proposed.

The large number of amendments proposed providing for changes in the method of electing the President and Vice President, the time of the commencement and termination of the presidential term, the length of the presidential term, together with provisions fixing the number of terms and also the presidential succession, indicates a wide-spread dissatisfaction with the executive department. The senate on three occasions passed a joint resolution providing for a change in the time of inaugurating the President, and on another occasion passed one limiting the President to one term of six years. Of the powers granted

the President in the Constitution, the veto power has called forth the greatest number of proposals for alteration. That he be given the power to veto separate items in appropriation measures has been urged in over a dozen proposed amendments. On the other hand, attempts to diminish the power of his veto have been made in proposed amendments providing for the passage of vetoed measures by a majority vote in both houses. The appointing power of the President would be materially reduced by the adoption of several amendments proposed during this period, providing for the election of judges and other appointive officials in the department of justice, members of the cabinet, collectors of customs and internal revenue, and postmasters.

The judiciary has been attacked at many points. In summing up the proposed amendments affecting this department, one can not avoid the conclusion that the general purpose is to strip it of its independence of responsibility to the people. Provisions fixing the number of judges on the supreme court; for the election of judges by the people; for a term of office of from eight to twelve years; for removal by concurrent resolution of congress, or by a simplified method of impeachment, were embodied in the amendments proposed. As to the jurisdiction of the courts, the efforts to amend, although few, have provided for its limitation.

By far the greater number of amendments proposed have related to the powers of the government. Attempts to amend the financial, commercial, territorial, and war powers have been made with great frequency. Provisions for apportioning direct taxes among the several States, according to the valuation of property subject to taxation in the several States; for an income tax without apportionment according to population, as finally embodied in the sixteenth amendment; a corporation tax; removal of the prohibition of an export tax; and restrictions on private or special appropriation legislation, are the changes most frequently urged in regard to the financial powers.

The development of many trusts and monopolies beyond the control of the States during this period created a demand for their regulation by the national government. Amendments con-

ferring power on congress to regulate or suppress trusts and monopolies, as well as power to incorporate or license corporations engaged in interstate business, were proposed as a means of bringing about a solution of this recently developed problem.

Provisions restraining the government in the annexation of territory and in the admission of new States into the Union, appeared in several amendments proposed during the rise of anti-imperialism at the close of the last century.

Few amendments touching the war power were proposed. One is of interest, in that it provided for the abolition of the army and navy; others provided for limitations on the granting of pensions.

Frequently amendments relative to the relation of the government to the individual were proposed. Amendments empowering congress to regulate marriage and divorce; granting suffrage to women, repealing the fifteenth and part of the fourteenth amendments; specifying certain qualifications for citizenship; defining treason; limiting private fortunes; and providing for the punishment of certain crimes, constitute the greater number in this class.

The desire to extend police power to the national government is seen in over fifty amendments providing for the prohibition of bigamy and polygamy; the protection of labor by the establishment of uniform hours of service, and employer's liability; government insurance; prohibition of lotteries; and the suppression of the liquor traffic.

That the recognition of God should be included in the preamble to the Constitution was the object of ten amendments proposed. To guard against sectarian legislation over a dozen amendments were proposed forbidding the granting of any aid to sectarian institutions. Provision for the establishment of a national free school system followed in several cases the provision for forbidding aid to sectarian institutions.

Several efforts were made to engraft the initiative and referendum, as well as the recall, on our system of government by constitutional amendment. Even the process of amendment did not escape attack. During the latter part of this period while

the forces were gathering for the passage and adoption of the sixteenth and the seventeenth amendments, provision for a simpler method of amendment appeared in several proposed amendments.

Taken as a whole, the proposed amendments to the Constitution afford an index of real problems confronting the government and the people. While in many cases the occasion for the change proposed is trivial, on the other hand many amendments proposed record the progress of great movements begun in an earlier period. In this latter group may be placed the movements for the direct election of senators, the direct election of judges, woman suffrage, uniform marriage and divorce laws, regulation of the liquor traffic, changing the time of the commencement and termination of the congressional and presidential terms, and the length of the presidential term as well as the number of terms. Problems more peculiar to this period may be seen in the proposed amendments providing for an income tax, prohibition of bigamy and polygamy, limitation on the acquisition of non-adjacent territory, regulation of trusts, and protection of labor.

More than 700 resolutions providing for 977 amendments were introduced in congress during this period. Two of these passed both houses of congress and were ratified by three-fourths the States and became a part of the Constitution. Ten others passed one or the other branch of congress;³ five providing for the direct election of senators, two changing the commencement and termination of the presidential and congressional terms, two providing for the succession to the presidency, and one limiting the President to one term of six years.

Several conditions characteristic of this period served to develop the large majorities necessary for amending the Constitution. The accumulation of large fortunes, and the formation of corporations and trusts with their constantly increasing influence in the state as well as in the national government, created a widespread feeling of hostility on the part of the great mass

³ Five passed the senate and five the house.

of the people. The problems of taxation and representation so prominent in the convention in 1787, came to the front again in this later period as a result of the economic and social conditions arising from our industrial development since the Civil War. Both the state and the national legislature became battlegrounds where the people arrayed themselves against special privilege. The results of this conflict were the gradual advance of the people to power and the enactment of laws for their welfare.

The incorporation of the income tax provision in the revenue measure of 1894 was but a part of this movement. A shifting of a part of the burden of national taxation from the consumer to the income of the rich, had been demanded since 1884 by minor political parties whose strength lay with the farmers of the West and South and the laboring classes of the large cities. By 1894 this Populistic scheme fitted in well with the Democratic party's anti-protection policy in framing their revenue measure, but this "communistic march," as Mr. Choate characterized it before the supreme court, was stayed the following year by that body in declaring the income tax unconstitutional in the case of *Pollock vs. Farmers' Loan and Trust Company*.⁴ The advocates of an income tax, however, had no thought of quitting their attack on wealth because of the court's decree, but immediately set about to remove the constitutional barrier in the way. The return of the Republican party to office in 1897, and the restoration of the protective tariff, removed the immediate need for new sources of revenue, while the public interest in the national problems connected with our war with Spain, diverted for a time the assault on special privilege. The formation of trusts and the gigantic financial power created by the accumulation of capital immediately following the war, revived the spirit of dissension on the part of the consumers not benefited by protective tariff to such an extent that its presence as a real force, demanding a tax on incomes to the end that wealth might bear its proportional share of the burden of taxa-

⁴ 157 U. S., 429; 158 U. S., 601.

tion, made itself felt even in the Republican party. The slight concession in the Republican platform of 1904, to the effect that protection should be adjusted to the difference in the cost of production at home and abroad, the recommendation of a tax on incomes by President Roosevelt in his annual messages of December 3, 1906, and December 2, 1907, when viewed in the light of subsequent events, indicates that a portion of the Republican party, at least, had recognized the presence of a demand on the part of a considerable portion of the people for a readjustment of the burdens of taxation. The presidential campaign of 1908 presented the issue between the people on the one hand and capital and special privilege on the other, in a more definite form than it had hitherto taken in national politics, and indicated the national strength of the forces favoring an income tax. Although the Republican party did not include a plank advocating an income tax in its platform in 1908, as did several of the other parties whose combined strength at the November election proved to be only slightly below that of the Republican party,⁵ the pledge of the party to a revision of the tariff in a special session of congress showed its apprehension of the growing demand for such a tax. The recommendation by President Taft in a special message to Congress, June 16, 1909, that an amendment to the Constitution be proposed providing for an income tax and the subsequent introduction of a resolution to that effect, from the committee on finance by Senator Aldrich of Rhode Island, on June 28, 1909, was but the surrender of the last stronghold of capital and special privilege that stood in the way of this popular movement.

The amendment providing for the election of United States senators by the direct vote of the people is a result of the same movement on the part of the people to more carefully safeguard their interests by changing the machinery of their government so as to make it function more closely in accord with the popular will, rather than to change its function to meet a certain

⁵ In 1908 the Democratic, Socialist, Prohibition and Independence parties demanded an income tax. The total vote polled by these four parties was 7,208,127; while the Republicans polled 7,679,006 votes.

popular demand, as was the case in the sixteenth amendment. Although the movement for amending the Constitution so as to place with the people the power to elect United States senators, had its inception more than three-quarters of a century before the final adoption of the seventeenth amendment, it was not until a great reaction against representative government in favor of popular government occurred, that it was assured success. The arguments advanced in the earlier period of the movement, that the election of senators by the state legislature was undemocratic as a method and evidenced distrust of the people, and that their choice by the people would be more consistent with the genius of American government, did not appeal with sufficient force to congressmen or to the people to produce any concerted action.

The stress of conditions in the West which gave rise to the Populist movement in the early "nineties," and which failed to find relief by means of national legislation either through the free coinage of silver or an income tax, forced the newly organized party to turn to the state legislatures for relief. Immediately there began an assault on every piece of political machinery that offered resistance to the legislation they proposed, with the result that the initiative, referendum and recall were instituted as devices to strip representative government of its power to thwart the popular will. Such were the means by which the people eventually came to their own, not only in the West, but in every section of the Union where a corrupt or boss-ridden government failed to respond to popular demands.⁶ An amendment to the Constitution providing for a still further application of this popular control of the machinery of government appealed to the people now not so much as a logical development of democracy, but with far greater force as an expedient method whereby they could more completely exercise control over their state legislature, as well as secure a more direct influence in the United States senate.

⁶ For a brief account of this movement, see Charles A. Beard, *Contemporary American History*, pp. 283-288.

The adoption of the seventeenth amendment was the result of a force characterized by Senator Borah as absolutely resistless, a force borne on, not by a tide of popular hysteria, but "a tide of the earnest effort of the American people to make what free government is destined to be in the last analysis—popular government."⁷

The number of amendments proposed in each congress has gradually increased during this period from sixty-six in the 51st Congress (1889–1891) to one hundred and thirty in the 62d Congress (1911–1913), providing in the latter case for some forty changes in the Constitution. In all, over twenty-seven hundred proposals to amend the Constitution have been made during the first hundred and twenty-four years of its history.⁸ Out of this large number of proposals only seventeen have become a part of the Constitution. Upon considering the large number of amendments proposed and the exceedingly small proportion adopted, the question immediately arises whether the conditions imposed by the convention of 1787 relative to amending the Constitution will not eventually become so onerous as to overtax the patience of the American people. The adoption of the sixteenth and seventeenth amendments has no doubt done much to dispel the long standing notion that our Constitution can be amended only in times of great crises, but the popular demand that secured the adoption of these two amendments was not satisfied with this achievement or with the hope of securing the adoption of others of a similar character.⁹ The method of amendment as provided in article V of the Constitution loomed

⁷ 61st Cong. 3d Sess., Jan. 19, 1911. *Record*, p. 1107.

⁸ 1736 were proposed during the first century of the Constitution, see Ames, *The Proposed Amendments to the Constitution of the United States during the First Century of its History*; 977 proposed during this period, 1889–1913. These numbers are taken from the calendars of amendments proposed during these two periods. Professor Ames' contains many amendments inserted after the 1736 were compiled, which when added to the latter number makes the total number in his calendar 2023. It would thus be more accurate to place the number of amendments proposed during the period from 1789 to 1913, at 3000.

⁹ For example, proposed amendments providing for direct election of President and Vice President, election of judges, election of postmasters, recall of representatives, initiative, referendum, woman suffrage, protection of labor.

up before the advocates of popular government as an ever present obstacle in their way, and it was against this stronghold of the opposition that they eventually directed their attack. Evidence of this phase of the movement made its appearance late in this period, during the 61st and 62d Congresses (1909-1913) when six amendments were proposed providing for a simpler method of amendment. During the 63d Congress, which, however, lies beyond the period under consideration, no less than ten such proposals were made.¹⁰

Considering the fact that during the first century of the history of the Constitution only three proposals were made to change the method of amending the Constitution,¹¹ this later phase in the development of the movement for popular government bids fair to produce results of far-reaching importance.

¹⁰ 63d Cong., 1st Sess. S. J. R. 9, 20, 24, 26; H. J. R. 60, 95. 63d Cong., 2d Sess. H. J. R. 220, 221, 319. 63d Cong. 3d Sess. H. J. R. 422. S. J. R., 26 was reported adversely from the Committee Judiciary. Feb. 5, 1914, Mr. Cummins of Iowa submitted the report of the minority in which, with the exception of several points, Ashurst of Ariz., Walsh of Wash., Borah of Idaho, Nelson of Minn., and Overman of N. C. concurred. See S. Report 147.

¹¹ See Ames, *The Proposed Amendments to the Constitution of the United States during the First Century of its History*, pp. 292-293.

THE JUDICIAL VETO AND POLITICAL DEMOCRACY¹

BLAINE F. MOORE

University of Kansas

Since the United States has theoretically no police power, and since the federal Constitution is essentially a political document, the national judiciary must in the main use political clauses of the organic law as the basis for nullifying statutes. While clauses of this nature are thus frequently made to serve as a basis for the decisions, the great majority of statutes nullified by the United States supreme court have pertained in fact to economic and social rather than political matters.² While the court has nullified in all about thirty-three federal statutes, the scope of this discussion will permit of a summary only of the more important statutes which have directly affected political questions.

The political principle of separation of powers has afforded the basis for the nullification of seven federal statutes.³ All these decisions have, however, affected the power and jurisdiction of the court itself; and in every jurisdictional case, with but one unimportant exception, the court has refused to accept authority which congress attempted to bestow upon it.

While the court has thus almost uniformly limited its authority in the jurisdictional cases, in one instance the principle promulgated was most momentous—the one laid down in *Marbury vs. Madison*. The source of the judicial power to nullify an act of a coördinate legislature will not be discussed here, but even recognizing the existence of such power, the use of it in

¹ A paper read at the annual meeting of the American Political Science Association, December, 1915.

² *E.g.*, *Employers' Liability Cases*, 207 U. S. 463; *Adair vs. U. S.*, 208 U. S. 161; *Keller vs. U. S.*, 213 U. S. 138.

³ *U. S. vs. Todd*, 13 How. 52; *Marbury vs. Madison*, 1 Cr. 137; *Gordon vs. U. S.*, 2 Wall, 561 & 117 U. S. 697; *The Alicia*, 7 Wall. 571; *U. S. vs. Klein*, 13 Wall. 128; *U. S. vs. Evans*, 213 U. S. 297; *Muskrat vs. U. S.*, 219 U. S., 346.

this particular instance was not necessary. It would seem clear that the section of the judiciary act nullified could have been so construed as to save it. The promulgation of this great doctrine in this particular instance seems to have been gratuitous on the part of Chief Justice Marshall.

The maintenance of the proper relations between the national and state governments is also a political concept which has served as the basis for the nullification of twelve United States statutes.⁴ These cases, with one exception, can be dismissed with the explanation that the decisions are not important for the present discussion, or that they follow decisions previously made or principles which would seem quite obvious or necessary. The exception (the civil rights cases), is of very considerable importance. According to this decision, congress was given no direct positive power by the fourteenth amendment but must content itself with corrective legislation which in practice amounts to prescribing modes of appeal from the state to the federal courts and by this means check prohibited state action. "This is the legislative power conferred on congress and the whole of it." Because of of this interpretation the federal judiciary exercises practically the whole of the power conferred on the United States government by the fourteenth amendment. Since much of the newer state social and industrial legislation is contested under this amendment the importance of the decision can scarcely be overestimated.⁵

In the *Dred Scott* case,⁶ the court took up a question which at the time was of vital political importance and nullified in effect the Missouri Compromise, though the validity of this statute was not directly involved. The court voluntarily overturned what was considered, by the North at least, a fun-

⁴ *U. S. vs. Dewitt*, 9 Wall 41; *The Collectors vs. Day*, 11 Wall. 113; *U. S. vs. Railroad Co.*, 17 Wall. 322; *U. S. vs. Reese*, 92 U. S. 214; *U. S. vs. Fox*, 95 U. S. 670; *Trade Mark Cases*, 100 U. S. 82; *U. S. vs. Harris*, 106 U. S. 629; *Civil Rights Cases*, 109 U. S. 3; *Baldwin vs. Franks*, 120 U. S. 678; *James vs. Bowman*, 190 U. S. 127; *Employers' Liability Cases*, 207 U. S. 463; *Keller vs. U. S.*, 213 U. S. 138.

⁵ Other cases, coming under this classification, are omitted because they have but little bearing on political matters in effect, though they may have been based on political clauses of the constitution.

⁶ 19 How. 393.

damental compact on the slavery question. Because of the war which followed, the decision had but little permanent effect, but it was a most ambitious and unsuccessful attempt on the part of the court to solve a live political issue.

The court again passed on a political question in determining congressional power in relation to paper money. Again the court limited legislative authority and again found itself on the unpopular side of a political question. Both congress and the people refused to regard the issue as settled and the decision was soon overturned by effecting a change in the personnel of the court.⁷

Another instance of the court championing the unpopular side of a contemporaneous political question is furnished by the income tax cases.⁸ Although the court had previously⁹ upheld a federal income tax, these later decisions made such a tax economically impossible until it was provided for by a constitutional amendment.

It will thus be seen that in the three instances in which the court passed on important and national political questions it failed in each case to settle the issue involved, and in all instances its decisions were overcome, one by war, one by a change in the personnel of the court, one by a constitutional amendment. In the latter case an income tax which seems to be generally approved was delayed for about twenty years.

The United States supreme court has nullified about 250 state statutes and municipal ordinances. In a considerable number of instances these statutes conflicted with political clauses of the Constitution, but in surprisingly few cases have the decisions mainly affected political activities of the States. In nearly all instances they pertain to economic and social matters involving property rights rather than political affairs. It is true that some of these became involved in party politics and were

⁷ *Hepburn vs. Griswold*, 8 Wall. 603; *Legal Tender cases*, 11 Wall. 682; *Juillard vs. Greenman*, 110 U. S. 421.

⁸ *Pollock vs. Farmers Loan & Trust Co.*, 157 U. S. 429 & 158 U. S. 601.

⁹ *Springer vs. U. S.*, 102 U. S. 586.

matters of wide popular discussion, but this was not because they concerned the political activities of the States affected.¹⁰

The supreme court, however, has recently annulled two state statutes which have political significance. One of these is the Arizona law regulating the employment of aliens (*Truax vs. Raich*, decided October 15, 1915), and the other, the grandfather voting clause in the Oklahoma constitution. Possibly the only objection to this last decision is that it was not made years ago.

Thus, in most cases in which the national supreme court has judicially vetoed state statutes the issues involved have not been political in the proper sense of the word, and there would seem to be little cause of complaint regarding the court's decisions so far as this particular phase of the question is concerned.

In regard to state courts and their power to nullify state statutes and local ordinances the question is not so clear. At various times the courts have checked the legislatures in their attempts to regulate some phase of political activities or to introduce political reforms. In some instances the States have been forced to abandon their attempts or adopt constitutional amendments.

One of the earliest attempts to guard the ballot box in this country was by the adoption of registration laws and these now exist for practically all cities and towns of any size. There has not been any serious constitutional objection to these statutes though in a few cases such laws were judicially nullified on their merits.¹¹ A considerable number of technical difficulties have been encountered, the main objection having been that such laws increase the constitutional requirements for

¹⁰ The taxing powers of the States have at times been checked and at other times regulated and the issues have become party issues. (See *State Bank vs. Knoop*, 16 How. 369, and the other Ohio bank cases.) Because of the interstate commerce clause the power of the States to regulate the liquor traffic has been interfered with and the issue again became partisan in some instances. It is also well known that the States have been constantly checked in their efforts to regulate common carriers and control their rates but the courts in their decisions on these questions are not passing on matters which are in themselves political.

¹¹ See *White vs. Multnomah Co.*, 10 Pac. 484, (Oregon).

voting.¹² While these judicial objections have in some instances delayed such laws no serious difficulty has been encountered because of the attitude of the courts.

About twenty-five years ago a movement began which rapidly spread over the country and within a decade of its appearance the majority of the States had accepted it. This was the adoption of the Australian ballot. With but a few exceptions there was no judicial objection to this on its merits, though occasionally a statute in whole or in part was nullified because of technicalities.¹³ To put this reform into effect required regulations of parties and thus both the courts and the people became accustomed to the legal recognition of parties and the way was paved for a more elaborate code of regulations later.

The next development in party regulation was the voluntary and then the mandatory direct primary.

Such legislation does not apparently conflict with the United States Constitution,¹⁴ and with the exception of two States there has been but little difficulty with state constitutions.¹⁵

Two States, however, California and Illinois, have had serious difficulties with primary laws. California met its first obstacle in 1892 when part of an Australian ballot law was nullified.¹⁶ A primary law enacted in 1895 was held void because it was legislation of a special and local nature.¹⁷ Another act passed in 1897 was nullified because of registration difficulties. It was also judicially objectionable because the voter was required to express his intentions to support the candidates for whom he voted

¹² See *Attorney General vs. Detroit*, 44 N. W. 388, (Mich.). *Dagget vs. Hudson*, 3 N. E. 538 (Ohio); *Dells vs. Kennedy*, 6 N. W. 246 (Wis.); *State vs. Conner*, 34 N. W. 499, (Neb.).

¹³ *Eaton vs. Brown*, 31 Pac. 250, (Cal.); *Moyer vs. Van Devanter*, 41 Pac. 60, (Wash.).

¹⁴ *Kenneweg vs. Commissioners*, 102 Md. 119.

¹⁵ *Nebraska* (*State vs. Drexel*, 105 N. W. 174); *North Dakota* (*Johnson vs. Grand Forks Co.*, 113 N. W. 1071), and *Michigan* (*Dapper vs. Smith*, 101 N. W. 60) and a few other states have had primary laws nullified in whole or in part, but these were because of technical difficulties or because of certain features of the statutes which did not affect the merits of the question.

¹⁶ *Eaton vs. Brown*, 31 Pac. 250.

¹⁷ *Marsh vs. Hanley*, 43 Pac. 975.

at the primaries.¹⁸ In 1899 the legislature made another attempt and in order to meet the court's suggestion that the legislature probably could not require party tests these were entirely omitted. The court held that under this statute "the control of parties . . . is taken from the hands of its honest members and turned over to the venal and corrupt of other political parties or of none at all." The law was void on this account and also because it was limited in its application to parties casting more than 3 per cent of the votes at the last regular election and no provision made for smaller parties to hold conventions.¹⁹

After these ill-fated legislative attempts, California adopted a constitutional amendment authorizing legislation on primaries.

Illinois had a somewhat similar experience. A general primary act was passed in 1905. This was declared void partly because of an improper delegation of legislative power to the county committees and partly because each candidate was required to pay a fee. This latter requirement, the court regarded as adding to the constitutional qualifications for office holding.²⁰ A special session of the legislature passed another act in 1906; and again it was held that the statute improperly delegated legislative power to the county committees. There were also technical difficulties with the cumulative voting system for legislators.²¹

In 1908 the legislature made another attempt, and once more there were fatal constitutional difficulties in regard to registration and also with the cumulative voting system.²² Not yet discouraged, the legislature in 1910 passed two bills, one applying only to legislative elections and the other to the remaining elections. The first was again held void because of conflict with the cumulative voting provisions in the Constitution.²³

¹⁸ *Spier vs. Baker*, 52 Pac. 659.

¹⁹ *Britton vs. Board of Commissioners*, 61 Pac. 1115.

²⁰ *People vs. Election Commissioners*, 221 Ill. 9.

²¹ *Rouse vs. Thompson*, 228 Ill. 522.

²² *People vs. Strassheim*, 240 Ill. 279.

²³ *People vs. Deneen*, 247 Ill. 289.

In regard to the regularity of the adoption of state constitutional amendments there has been some doubt as to whether this is a judicial question or a political matter outside of the province of courts. It is still an open question whether the federal judiciary will pass on this matter, and the issue has apparently been presented to it but a very few times. In an early case²⁴ it was held that the United States courts had no jurisdiction in such matters while another and later case maintains that they have.²⁵ It is now quite uniformly held by the state courts, however, that they will determine if the procedure prescribed by the constitution has been properly followed. The judges of some States have been very strict on this question, and hold that legislatures in submitting constitutional amendments have less procedural discretion than in passing ordinary legislation, since the amendment is really adopted by the people. Consequently in such instances the constitution must be more closely followed than in enacting ordinary statutes.²⁶

The greatest judicial difficulty has been in the determination of just what part of a popular vote is necessary in order to adopt an amendment. This difficulty arises when the constitution states that an amendment shall be adopted when approved by a majority of voters, or by a majority of voters present and voting. The question is, does this require a majority of all votes cast at such an election or of all the voters of the State, or simply a majority of those actually voting on the amendment. The decisions on this point are not uniform, some holding to the first interpretation and some to one of the others.²⁷

Indiana has had serious trouble with its amending clause because of judicial decisions. By holding that the constitutional clause requiring a majority of electors to ratify a constitutional amendment meant a majority of all electors and also by its con-

²⁴ *Smith vs. Good*, 34 F. R. 204.

²⁵ *Knight vs. Shelton*, 134 F. R. 423.

²⁶ See *Livermore vs. Waite*, 36 Pac. 424 (Cal.).

²⁷ *Dayton vs. St. Paul*, 22 Min. 400, *Green vs. Board of Canvassers*, 47 Pac. 259, (Idaho) holding a majority of votes cast on amendment to be sufficient. *State vs. Brooks*, 99 Pac. 874, (Wyoming) for opposite view. In this case about 37,000 votes were cast at the election, 12,000 for the amendment and 1300 against but the court held the amendment had not been adopted.

struction of the clause that when one set of amendments are pending, no others can be proposed, the state court effectively blocked constitutional changes for twelve years. An unimportant amendment did not receive a majority either for or against and consequently was, as the court's decision was understood, still pending and no new amendments could be proposed.²⁸ Then the legislature attempted to promulgate an entirely new constitution and the court prevented this.²⁹ After thus blocking all constitutional changes the court modified what was at least the popular construction of its decisions by holding that an amendment once failing to pass was no longer pending, and the way was opened for the proposal of other amendments.³⁰

The federal judiciary will not interfere with the initiative and referendum in the States because of the republican form of government clause in the national constitution or apparently because of any other clause in that document.³¹

The state courts have held almost uniformly that the legislature may submit for approval an act local in its application to the people directly affected. This has long been a settled question and such referenda have encountered but little judicial opposition.³² Tennessee seems now to be the only State in which the courts object to this.³³

In regard to the state wide referendum the rule is the reverse. It has been so uniformly considered that this is an improper delegation of legislative power that but few States have attempted it unless it is specifically authorized by the Constitution. Where it has been attempted it has usually been held to be an unconstitutional procedure.³⁴ Vermont, however, in an early

²⁸ *State vs. Swift*, 69 Ind. 505; *Re Denny*, 156 Ind. 104.

²⁹ *Ellingham vs. Dye*, 178 Ind. 336.

³⁰ *Re Boswell*, 179 Ind. 292.

³¹ *Pacific States Telephone Co. vs. Oregon*, 223 U. S. 118; *Kiernan vs. Portland*, 223 U. S. 151.

³² Originally at least four States objected to this, Indiana, Iowa, California, Texas; but the decisions in these States objecting to the local referendum have been either definitely or practically over-ruled.

³³ *Wright vs. Cunningham*, 91 S. W. 293, (1905).

³⁴ See, *Barto vs. Himrod*, 4 Seld. 483; *Santo vs. State*, 2 Iowa 165; *State vs. Hayes*, 61 N. H. 264.

case upheld it;³⁵ and Wisconsin holds that there is no essential difference between a local and general referendum and since the former is constitutional the latter is also.³⁶

The recall of officers as applied to municipal governments seems to have been accepted as a matter of course. If the referendum applied locally is constitutional there seems to be no reason why the legislature may not have similar discretion in regard to the recall. In one State at least (Texas) it has been decided that the recall in local affairs does not conflict with either the state or national constitution.³⁷ The application of the principle to other than local officers seems not to have been attempted without specific constitutional authority.

The theory that a few men sitting in the higher courts of this country, largely beyond popular control, could by their power to nullify statutes, arrest political progress is not a very attractive one in a country whose government is supposedly based on democratic principles. But a study of the method and extent to which this power has been used, so far as it affects political matters, does not lead to any very alarming conclusions. In certain instances the use of this power has been objectionable. In Indiana constitutional progress was arrested for a number of years by judicial decisions which seemingly were not made necessary by the constitution. In Illinois and California primary laws were delayed, and in the latter State such a statute was only made possible by a constitutional amendment, yet California's organic law offered no more obstacles to this legislation than that of the other States where similar laws were upheld. Registration laws have been delayed in some instances largely because of technicalities but these delays have not been serious.

These instances are, however, exceptions rather than the rule. It can perhaps be safely said that the attempts of the States to regulate political matters and control political parties have generally gone without serious challenge on the part of their own judiciary.

³⁵ *State vs. Parker*, 26 Vt. 357.

³⁶ *State vs. O'Neil*, 24 Wis. 149; *Smith vs. Janesville*, 26 Wis. 291; *State vs. Frear*, 142 Wis., 320.

³⁷ *Bonner vs. Belsterling*, 138 S. W. 571.

The United States supreme court by its power to nullify laws has not interfered with the purely political activities of the States to any considerable extent. Its attempts to settle political questions of general importance have been, judging from results, unsatisfactory and ill-timed and have had little or no permanent effect.

The protests against the judicial power to nullify statutes have been caused by decisions affecting social and economic conditions rather than political matters.

Some of the reasons for this judicial liberality are apparent. One is that the courts are not bound by any ancient principles of common law. Political activity on the part of the people is relatively new or at least is new in its present form, and hence the courts are free to work out whatever principles may seem best unhampered by precedent. Another reason is that property rights are not directly involved and the judiciary is not bound by all its traditional respect for property rights. Still another reason is that many of the judges have at some time in their career been engaged in active politics and thus have a better understanding of political conditions than they seem to have of social and economic matters in some instances. Also, political matters have always been regarded as largely non-judicial and peculiarly within the province of the legislature, and the courts have assumed a more liberal attitude towards legislation of this character than toward that perhaps of any other.

THE OPERATION OF THE DIRECT PRIMARY IN MICHIGAN

ARTHUR C. MILLSPAUGH, PH.D.

Whitman College

The purpose of the direct primary, in so far as its purpose can be formulated in general terms, was to realize within the party organization, and especially in the process of nomination, accepted principles of democratic control. It is a commonplace, however, that political machinery must in the long run be judged not by its theoretical democracy but by its practical results. In a study of direct nominations, then, it appears most fruitful to examine the system in its operation rather than in its theory, and, whenever possible, to compare its working with that of the system which it supplanted.

Since 1901 the Michigan legislature has passed more than thirty acts, original and amendatory, relating to the nominating machinery. From 1901 to 1905 legislation applied to selected counties, cities, and districts; from 1905 to 1909 it was both local and general but optional with the parties and with the localities; since 1909 it has been general and mandatory.¹ On the whole it has been halting, half-hearted, opportunistic, and unscientific, and is still far from perfection. At the present time all state officials elected in the spring, including judges of the supreme court and regents of the university, all elective state administrative officers except governor and lieutenant-governor, and all township and village officers are still nominated by the old method, a method which is also retained for the selection of delegates to state and national conventions and in a modified form for the drafting of party platforms.

¹ General Primary Election Laws: Public Acts, 1905, No. 181; 1907, (ex) No. 4; 1909, No. 281; 1911, No. 279; 1912, (ex) No. 9; 1913, Nos. 118, 392; 1915, Nos. 219, 313.

Accordingly, in the direct primary are nominated candidates for United States senator, representative in congress, governor, lieutenant-governor, members of the legislature, circuit judges, county officers and most city officials.

Direct nominations produced an improvement in the political atmosphere of the polling place and a change in the character of the pre-nomination campaign. Candidates so far as possible appeal directly to the voters rather than to the party leaders and party workers;² but now as formerly they make use of headquarters, political managers and secretaries, literary bureaus, press-agents, county managers, clubs, and local committees.³

County and district candidates aim to get into personal relations with the voters and in doing so make a considerable expenditure of time and money, an expenditure which was generally unnecessary under the convention system. Pre-primary campaigns, of course, take place only in the event of a contested nomination and therefore mainly in the Republican party which has a large normal majority in the State.

That the financial burden imposed on the candidates is greater under the direct primary is a complaint frequently expressed, but apparently with only partial justification. While it was reported that Republican governors in the early nineties secured nomination at an expense not exceeding \$2000,⁴ an experienced politician in 1896 estimated that a campaign for a nomination, presumably for the office of governor, would cost approximately \$40,000,⁵ and the amount spent by each of the Republican candidates in 1900 and 1902 has been commonly estimated at not less than \$100,000. Much of this expenditure

² Provisions in the laws requiring all county conventions of the same party to be held on the same day and declaring illegal the hiring of personal workers have contributed to make the appeal of the candidate general and direct.

³ *Detroit News*, April 25, May 18, 31, June 1, 14, July 7, 13, 15, Aug. 16, 22, 23, 29, Oct. 11, 1910; Aug. 16, 1912. The length and strenuousness of a pre-nomination campaign was illustrated in 1910. In that year the campaign of the successful Republican candidate for governor lasted eight months, and during this time, according to a newspaper report, he delivered 800 speeches and traveled 16,000 miles, most of the distance by automobile. *Detroit Free Press*, Sept. 5, 1910.

⁴ *Detroit News*, May 14, 1912.

⁵ *Detroit Tribune*, Jan. 20, 1896.

was secret, taking the form of payment for entertainment,⁶ for personal workers, and for direct bribery. In the first state primary campaign in 1906 there were no contests in either party, but the Republican gubernatorial contests of 1908 and 1910 were extremely close and probably more expensive than any that have followed.⁷ Estimates of individual expenditures vary from \$10,000 to \$90,000.⁸ The corrupt practice act of 1913⁹ limits the nomination expenses of candidates,¹⁰ and requires the filing of sworn financial statements. A candidate for governor is limited to an expenditure of \$2500, a sum which would scarcely pay for the mailing of one postal card to each of the 221,688 Republicans who voted in 1914.¹¹

In general, candidates appear to have filed statements in accordance with the law, but in many cases the statements themselves are incomplete or false. They appear to be most accurate in the rural counties and least reliable in the large cities. They are highly instructive, but unfortunately the law has prescribed no uniform scheme of itemization. In the Republican primary in 1914, Mr. Osborn, the successful candidate, reported an expenditure of \$1822.46,¹² while for the Democratic nomination Governor Ferris had no opposition and the only expense borne by the committee, self-appointed to secure his renomination, was a little over \$100 for the circulation of petitions.¹³ In the congressional primary in the first district the six Republican aspirants spent a total of \$1884.60, while the unopposed Democratic candidate spent nothing.¹⁴ In all

⁶ Ibid., Jan. 20, 1896; Oct. 23, 1898.

⁷ *Detroit Free Press*, Aug. 19, 1908.

⁸ *Detroit News*, April 19, 1912; *Grand Rapids Herald*, Sept. 18, 1910.

⁹ Public Acts, 1913, No. 109.

¹⁰ The law prohibits expenditure in excess of 25 per cent of one year's compensation, but provides that candidates for governor and lieutenant-governor may spend 50 per cent.

¹¹ One of the Republican candidates in 1912 said in a newspaper interview that he had tried to reach every registered voter with printed matter. *Detroit News*, July 18, 1912.

¹² Statement in office of clerk of Chippewa County.

¹³ Ibid., Ingham County.

¹⁴ Statements in office of clerk of house of representatives.

congressional districts in 1912 the average expense of Republican candidates was \$287.69, of Democratic, \$36.06; in 1914, the Republican average was \$404.77, the Democratic, \$85.67. Those Republicans who had to fight for places on the ticket disbursed in 1912 an average of \$417.16, in 1914, \$559.87. The successful candidates spent considerably more than the unsuccessful. Compared with their opponents the Democrats even in contested districts spent little. No candidates in either year approached the limit of expenditure which for congressional candidates is \$5000.¹⁵

In studying the expenses of county candidates we have the advantage of possessing data from various counties although unfortunately for only one campaign, that of 1914. The relation of primary expenditure to party strength is well illustrated by a comparison of Ingham and Washtenaw counties. These counties are nearly equal in population and in the salaries of their county officers, but Ingham is strongly Republican while in Washtenaw the Democrats have a fighting chance. In 1914 candidates in both parties for the five principal county offices¹⁶ spent in Ingham \$1078.88 and in Washtenaw \$1064.35; but while the Republicans spent in Ingham 94 per cent of the total, they spent in Washtenaw only 45 per cent.¹⁷ Where party strength is about equal it appears that contests occur in both parties and primary expenditure is equalized, but where one party predominates most of the financial burden is borne by that party.

Irrespective of legal limitations there has apparently been a tendency for primary expenses 'o decrease. A politician states that at the first primary election in his county, that of 1906, he won the Republican nomination for county clerk against four opponents with an expenditure of \$1700; but in 1914 in the same county the largest amount spent by any of five candidates for sheriff was \$129.¹⁸ The opinion of this politician is that ex-

¹⁵ U. S. Statutes at Large, Vol. 37, p. 28.

¹⁶ Sheriff, prosecuting attorney, clerk, registrar of deeds, and treasurer.

¹⁷ Statements, Ingham and Washtenaw counties.

¹⁸ Ibid., Calhoun County; and conversations. In 1914 the nomination for clerk was uncontested.

penses tend to grow less as the methods and necessities of primary campaigning become better known.

Accordingly, while there is among politicians a diversity of opinion with regard to the comparative financial burdens of the convention and direct nomination systems, the available data indicate that the direct primary is less expensive for state candidates and probably more expensive for county candidates, while for all candidates expenditure tends to decrease.

A skillful chairman of the Wayne County Republican committee estimated in 1896 that out of a total expenditure of about \$40,000 a candidate, presumably for the office of governor, would spend \$5000 for a political manager, \$10,000 for paid agents, \$2000 for local workers, and \$5000 for advertising.¹⁹ In the primary campaign of 1914 Mr. Martindale and Mr. Groesbeck, Detroit candidates for governor, each devoted almost one-half of his outlay to advertising; and, in general, candidates are spending now much more relatively for printing and advertising, and, if they observe the law, nothing for personal workers. The principal disbursements of local candidates are for newspaper advertising, cuts, and cards, with an occasional payment for automobile hire, printing, postage, and traveling.

The filing of petitions has not proved a satisfactory method of securing and exhibiting popular endorsement. Petition circulators are paid three, four, or five cents a name, and under the circumstances there are many duplications. Party enrollment which was a feature of the laws from 1905 to 1913 caused special inconvenience. In the cities about 50 per cent of the names had to be struck off as not being the names of enrolled voters, while in the rural districts petitions ran about 75 per cent good.²⁰ A Republican chairman charges that the Democratic leaders in his county call voters up over the telephone and ask them if they will sign petitions and when a reply is favorable the leaders simply write down the names.

The belief that the direct primary would evoke popular interest and lead to a more general participation in the making

¹⁹ *Detroit Tribune*, Jan. 20, 1896.

²⁰ *Detroit News*, July 9, 1912.

of nominations was an influential factor in the establishment of the system. According to the best opinion and such figures as the newspapers published the average attendance at the primaries under the convention system was about 20 per cent of the Republican party membership and less than 20 per cent of the Democratic. At the first local primary election in Detroit in 1903 the vote, according to the estimate of an able politician, was from 100 to 200 per cent greater than that in the corresponding primaries under the old system.²¹ In Grand Rapids the primary vote increased from 3921 in 1901 to 8213 in 1903.²²

The vote for candidates for governor, however, probably affords the best basis for a comparison. Disregarding the uncontested primary of 1906, the Republican vote had increased from 61 per cent of the party membership²³ in 1908 to 93 per cent in 1914; and the Democratic vote, unstimulated by contests, reached 25 per cent in 1912, relapsing to 19 in 1914. In the seven counties containing the most foreign-born and illiterate voters²⁴ the Republican vote has been far above the percentage for the State, in the last three primaries exceeding the party membership;²⁵ while in the seven counties containing the least foreign-born and illiterate voters the percentage has been considerably below that for the State.²⁶ In the urban counties the vote has generally been heavier than in the rural. In Detroit the vote in the four wards conceded to be the "worst" in the city²⁷ has always been markedly heavier than in the "best" wards,²⁸ and in 1914 the Republican vote in the "worst" wards

²¹ Simons, *Direct Primary Elections*, Mich. Pol. Sci. Assoc., *Publications*, V., March, 1904, pp. 134-144.

²² Files of the Grand Rapids *Herald*, 1901, 1902, and 1903.

²³ The vote for the candidate for secretary of state is taken as the party membership.

²⁴ Alger, Baraga, Cheboygan, Iron, Mackinac, Presque Isle and Schoolcraft.

²⁵ The percentages were: 1910, 120; 1912, 134; 1914, 109.

²⁶ Calhoun, Hillsdale, Ionia, Lenawee, Livingston, St. Joseph, and Washtenaw Counties. The percentages were: 1908, 54; 1910, 69; 1912, 51; 1914, 46.

²⁷ The fifth, seventh, ninth, and eleventh.

²⁸ The first, second, and seventeenth.

was over twice the party membership. The light Democratic vote has been much more uniform than the Republican. Popular participation, therefore, has in both parties been more general than in the primaries of the old order, but unfortunately the voting in the majority party is quantitatively best where the electorate appears to be qualitatively worst.²⁹

A study of the percentages of the last three primaries, making deductions for the Republican split in 1912 and the consequent decrease in the party membership as indicated in the election returns, makes it clear that the Republican primary vote as compared with the party membership was actually less in 1912 than in 1910 or 1914 while the Democratic vote was larger in 1912 than in 1910 or 1914.³⁰ A reason for these reciprocal fluctuations may be found in legislative attempts to curb Democratic participation in Republican primaries, an admitted evil and a most difficult and persistent problem. To reduce this evil to a minimum the legislature had provided for party enrollment, but the resulting partly "closed" primary made inter-party incursions more difficult without completely preventing them.³¹ Where Democrats had sufficient individual foresight or where they were guided by skilled manipulators they enrolled as Republicans and voted in the Republican primaries. To encourage them to vote in their own party the legislature in 1911 amended the law so as to require of each party, as a condition precedent to a place on the official ballot, a vote in the primary election equal to at least 15 per cent of its membership; but this requirement, as well as the provisions for enrollment,

²⁹ The above statements hold good for the total primary vote of all parties as compared with the total election vote, although the percentages of course are smaller. Those for the state, however, are: 1908, 39; 1910, 56; 1912, 40; 1914, 55.

³⁰ The Republican percentages were: 1910, 86; 1912, 90; 1914, 93. But the combined Republican and Progressive vote in the primary in 1912 was only forty-nine per cent of their combined vote in the election. The Democratic percentages were: 1910, 16; 1912, 25; 1914, 19.

³¹ In wards in Detroit which were strongly Democratic more Republicans were enrolled than Democrats. *Detroit News*, Aug. 23, 1912. In 1912 in Detroit which at the time had a Democratic mayor there were 11,584 enrolled Democrats and 46,676 enrolled Republicans. *Detroit News*, Aug. 3, 1912; *Detroit Free Press*, Aug. 26, 1912.

was abolished by the legislature of 1913, making the primary of 1914 absolutely "open."

The decreased Republican primary vote in 1912 and the increased Democratic vote were probably due more to the general political situation, which encouraged Democratic local contests and discouraged Republican, than to the 15 per cent provision; but nevertheless, the returns suggest a shifting of votes from one party to the other, and are therefore indicative of the extent to which the minority party has interfered in the internal affairs of its opponent. A comparison of Ingham and Washtenaw counties furnishes additional illustration. In Washtenaw, where elections are doubtful and contests occur in both parties, the percentage of Democratic voting in the primary has been larger than in Ingham, a "safe" Republican county, and the percentage of voting Republicans smaller. The extent of Democratic interference is suggested by the fact that in Ingham the Republican vote decreased 24 per cent in 1912, and increased 36 per cent in 1914 while the Democratic vote increased 8 per cent in 1912 and decreased 5 per cent in 1914. In Washtenaw the fluctuations are not only markedly less, but in 1914 the Democratic vote showed an increase.³²

It has been stated that at times various counties and wards have cast more Republican votes in the primary than in the election. Such a phenomenon has usually been caused by Democratic participation, but it may be due to local pride or to defections in the election. A combination of these three causes appears in the Wayne County vote in 1914. This county had two "favorite sons" neither of whom secured the nomination. The successful candidate, Mr. Osborn, having supported Mr. Roosevelt in 1912, the "regular" Republican leaders in Detroit, which is in Wayne county, quietly "swung" the controlled vote to the Democratic candidate. The Republican primary vote in Wayne was 47,334; the vote for Osborn in the election was only 21,483. In "Billy" Boushaw's precinct, the first of the first ward, the primary vote for governor was: Republican,

³² The percentages were, in Ingham: Republican 1910, 66; 1912, 42; 1914, 78; Democratic, 1910, 12; 1912, 20; 1914, 15; in Washtenaw: Republican, 1910, 57; 1912, 43; 1914, 47; Democratic, 1910, 25; 1912, 30; 1914, 43.

265; Democratic, 12; while the election vote for governor was: Republican, 1; Democratic, 259.³³

Democratic participation has occurred in all counties which are strongly Republican and reaches its maximum where there is a body of controlled voters as in Detroit. In the "open" primary of 1914 the evil was apparently more serious than ever before and was probably responsible for the nomination of a Republican candidate who was distasteful to the majority of his party. While there is no opportunity for a numerical comparison, party interference is probably greater now than under the convention system. Returning to this problem, the legislature of 1915 provided for separate ballots and prescribed that when the voter asks for his ballot "the inspector shall enter his name upon the list together with the name of the party the ballot of which is requested."³⁴ This law makes enrollment an accompaniment of voting rather than a prerequisite and qualification for voting.

Besides the evil of inter-party interference, Michigan has suffered considerably from the putting up of "dummies" and the multiplying of candidates with resulting minority nominations. For example, in the first district congressional primary in 1914 there were six Republican candidates, and out of a total vote of over 20,000, less than 5000 sufficed to nominate. In the gubernatorial primary of the same year involving five Republican candidates the nominee received 58,405 and his opponents 143,770. When there are more than two candidates, and there very frequently are, a minority nomination appears to be the general rule.

A nominating system, however, deals with human not mathematical factors, and after all the true test of the machinery is found in the character of its product, the nominee. The large number who hold that nominations have not improved point to the machine politicians who were conspicuous under the old

³³ In the first of the second, the primary vote for governor was: Republican, 166; Democratic, 2; while the election vote for governor was: Republican, 38; Democratic, 147.

³⁴ Public Acts, 1915, No. 313.

régime who have not been retired under the new. The Republican nominee for governor in 1908 ran 66,062 votes behind the state ticket, receiving the smallest Republican plurality since 1890, and the unacceptability of the candidate in 1914 has already been referred to. A rural county chairman thinks that it is the "smooth oily guy" who gets the nomination. A Detroit newspaper writer of long experience declares that the system brings out "freak" candidates, men with personal conceits and hobbies, men who have much to win and little to lose. A Detroit lawyer who led in the fight for the direct primary a decade ago, but whose opinion of it has changed, observes that young lawyers enter the primary to get their biographies in the papers and their names in the public ear. Sometimes such an irresponsible adventurer aided by luck is nominated. Thus, in Detroit in 1910 Mayor Breitmeyer was accidentally defeated for a Republican renomination by one Owens, called by the Municipal League, "A poorly educated lawyer with a poor business."³⁵

Hostile critics of direct nominations contend, moreover, that the system is practically unfitted to enlist the services of the best men. A good man, they say, dislikes to offer himself or appear to offer himself for a nomination and to conduct a personal campaign involving heavy physical and financial burdens and disagreeable controversy. The convention representing, at least in theory, the unified sentiment of the party could deliberately select a man to meet the peculiar exigencies of the time, and could conscript when the direct primary must wait for volunteers. The convention issued what was at once an invitation and a command of a party rather than of a faction, and this call to service and leadership was as flattering as it was compelling. In the fourth congressional district in 1912 the Democrats believed that a well-known candidate with an honorable public record would be able to defeat Congressman Hamil-

³⁵ I say "accidentally" because Owens received the votes of Democrats and disgruntled Republicans who had no idea of nominating him, but who aimed to discredit the mayor by giving his opponent a substantial vote. Many voted for Owens as a joke. *Detroit News*, Oct. 29, 1910.

ton. Accordingly they asked Judge Yapple, probably the strongest Democrat in the district, to enter the primary. Judge Yapple was old, no longer inclined to seek honors and a contest with two young and ambitious fellow-Democrats was repugnant to him. He therefore declined to run. Under the convention system it is argued, Judge Yapple would have been nominated and the election returns show that he would probably have been elected.

On the other hand, those who believe that nominees are of a higher order point to a general improvement in official character, to the infrequency of graft and scandals, to the retirement of many bosses, and to the absence, since the death of Senator McMillan in 1902, of a dominant state machine. In the senatorial primary of 1910 Congressman Townsend, an "insurgent" was opposed to Senator Burrows, a reactionary, and Townsend was nominated, even carrying the upper peninsula where, under the convention system, the mining interests who were favorable to Burrows had absolutely dominated the situation.

On the whole, however, the balance between the old and the new systems so far as the character of nominees is concerned appears to be about even. Under each system there have been nominations good or bad which could not have been made under the other.

Primary nominees, however, are likely to be of a somewhat different type. To get an important office one must still be a man of means, but since the adoption of direct nominations there have been no "barrel" candidates as in 1900 and 1902. It is a moot question whether the office-holder has an advantage over the non-office-holder. Many voters vote only for a name; and the incumbent of an office obtains an abundance of advertising and has an opportunity to make friends, the prime asset of the candidate. On the other hand, where the feeling is strong that honors should be "passed around" there is likely to be a prejudice against the office-holder. The city candidate is likely to win over his rural opponent and in general the cities appear to get a larger share of the county nominations than under the convention system. The presence of various racial elements con-

stitutes a difficult problem; and in the upper peninsula, where there are various distinct groups of foreign-born, nominations are likely to go to the numerically strongest racial group, producing dissatisfaction among the other groups.

Michigan laws have provided for the appointment of the officers of the local committees by the candidates, and this provision has given general satisfaction. Although not legally required to do so, the candidate for governor, at least in the Republican party, usually names the chairman of the state central committee. In the county committees as a whole, however, there is less activity and interest than formerly. They evidence less sense of responsibility and less fear of party discipline. In personnel the committees have improved except in Wayne County where local conditions have been unfavorable.

If the direct primary is unpopular among Republican candidates, as it unquestionably is, it is anathema to Republican managers. On one indictment they all agree: it "hurts" or "weakens" the "organization;" and by "organization" they mean the party as a vote-getting and vote-conserving association whose desiderata are solidarity, loyalty, enthusiasm, and discipline. It is possible that in some states the direct primary has strengthened the organization by reconciling the members of the party to the leadership of those they believe to have been fairly chosen, but under Michigan laws it has not had this effect.

Conventions, it will be remembered, are still held in Michigan; but having lost their most vital and exciting functions tend to become cut-and-dried affairs, and unless some leader of national reputation is advertised to speak they no longer attract the active workers of the party. It was a function of the convention to fuse party factions into a common loyalty and to act as a generator of partisan enthusiasm. The convention provided an opportunity for compromising differences so that, however fierce its factional contests may have been, at the end of its sessions it presented a united front to the enemy. The gathering had many resources. It could bargain with the leaders of factions, and throw sops to the disgruntled. Above all it could develop party strategy, which consists, for example, in nominat-

ing a farmer when the other party has ignored the farmers, or a man of talents to measure up to a strong adversary or an unusual emergency—in other words so to make its nominations as to appeal to the independent vote and to the maximum number of elements and interests. The direct primary is unable to do these things; or does them blindly, clumsily, and inadequately. The tendency under the convention system was for each party to attempt to seize the unguarded points in the field; while the tendency under the primary is for both parties to try to occupy the same space at the same time.

Furthermore, for a period ranging from six months to a year opposing candidates within the party engage in a personal campaign of cumulative intensity culminating only two months before the election. How wide the gap between factions may become is illustrated in speeches made by Mr. Osborn in the primary campaign of 1910. "One thing I do not believe in," he said, "is political assessment of political employees. I am fighting all the 400 employees of the governor. The administration is assessing all the employees it can control." And again: "If I am made governor I will put out of office, so far as possible, all the dishonest and incompetent appointees at present at work."³⁶ Thus, within the ranks of a party—for it must be remembered that both Mr. Osborn and the state administration were Republican—appeared the familiar characteristics of a clear cut struggle between parties: a machine, assessments, and spoils. These bitter internal struggles destroy the physical and moral unity of the party, forfeit the loyalty of its followers, sap its financial resources, and give to the opposition a store of unanswerable campaign arguments.³⁷

The weakening effects of factionalism are experienced almost wholly by the majority party, for the Democrats have not yet had a contest in a state primary. Moreover, as we have seen, the members of the minority party are much more than complacent spectators of their opponents' quarrels. They have ac-

³⁶ *Detroit Free Press*, Sept. 2, 3, 1910.

³⁷ "Apparently the rule is that the primary is harmful in proportion to the interest taken in it. . . . " *Detroit Free Press*, April 24, 1916.

tively intervened, and in important instances have probably determined the Republican candidate.³⁸ With no disrupting contests, the Democratic organization has retained large control over the making of nominations. With the nomination of minority candidates in the Republican party the selecting of the party officials by these candidates has the effect of putting the management of the party in the hands of a minority, and produces a discontinuity in Republican leadership; while in the Democratic party the absence of factions and contests has furnished no cause for the unseating of managers, and continuity in management has contributed to party strength. The direct primary, therefore, handicapping the stronger competitor in the race for office, acts to some degree as an equalizer of party strength. The stimulation and efficiency derived from unity, harmony, strategy, secrecy, continuity, and the saving of financial resources, remain in the minority party unimpaired.

As means of escape from the destructive effects of the primary two developments have taken place: the bi-partisan agreement and the pre-primary conference.

In Detroit, where there are according to common estimates 14,000 controlled voters, there has been an obscure but effective bi-partisan machine, called familiarly the "Vote-Swappers' League." There were rumors of such a combine as early as 1901, and to its development the foreign voters, the saloon influence, and the disappearance of distinctive party principles have contributed. But to such a combine the direct primary furnishes, in the means of manipulation which have been discussed in this paper, efficient instruments of control. How far the bi-partisan arrangement has extended is largely a matter of guess; although it is asserted to exist in other counties and an attempt has possibly been made to extend it to state offices.³⁹

The pre-primary meeting for the selection of candidates is a less covert and more defensible method for the reintroduction

³⁸ As in the nominations for governor and for congressman in the first district in 1914.

³⁹ See my paper on Bi-partisanship and Vote Manipulation in Detroit, in the *National Municipal Review*, Oct., 1916.

of management into the process of nominations. One Republican county chairman states that since the Progressive movement they have found it difficult to induce men to run for office and that the county committee has "had to hustle around and file petitions for them." Naturally this has been done more by Democrats than by Republicans; but in some counties both Republican and Democratic committees meet prior to the primaries, pick out candidates, and circulate petitions for them. When it does not actually circulate petitions the committee in many cases attempts to influence strong men to enter the race and weak ones to withdraw. In Washtenaw County the Democrats have held a pre-primary mass convention the object of which was to enthuse and unify the party and to afford an opportunity for the discussion of nominations. It is the majority party, however, which feels most keenly the need for some form of centralized control.⁴⁰ In 1914 the Republican state central committee appointed a sub-committee on revision of the primary law. The report of this sub-committee,⁴¹ representing the matured opinion of some of the more studious Republican leaders, recognized two "basic causes of complaint": "the persistent participation of Democrats and other hostile partisans" in Republican primaries, and the lack of opportunity for party counsel. To remedy this second defect the committee proposed that the state convention meet before instead of after the primary, that it make nominations, and that the convention nominees have first place on the primary ballot. The plan aimed to restore the nominating convention with safeguards in the selection of delegates, and to give to the rank and file of the party a power of veto and substitution. The Democratic and Progressive parties, declared the committee, "have almost never yet gone into a state primary in Michigan without some sort of an unofficial

⁴⁰ I am told that the Republican state leaders attempted to hold a pre-primary conference in 1912 for the purpose of agreeing upon a candidate, but objection was at once made that this proceeding was a violation of the spirit of the direct primary.

⁴¹ *A Petition to the Michigan Legislature*, printed by the Grand Rapids Herald, 1914.

conference of party leaders preceding the primary." The legislature, however, did not adopt the proposed plan.

While many party leaders insist that the pre-primary convention, legal or extra-legal, is inevitable, others dismiss the idea as adding one more complication to an already over-complicated situation. They say that, with a legalized pre-primary convention, there would be three campaigns where there are now two: one for the convention, one for the primary, and one for the election, making conditions intolerable for the candidate.⁴²

It is not altogether irrelevant to inquire whether the convention system would, if restored, work as badly as it did a decade ago. This inquiry, however, was pretty thoroughly answered in 1912. The Republican state convention for the choosing of presidential delegates, the worst in almost every respect in the history of Michigan, illustrated the inherent faults of the convention system, its incapacity to adjudicate vital disputes equitably and the lack of provision for an impartial preliminary organization and for an impartial presiding officer. In the campaign for delegates prior to this convention, the Taft managers spent almost \$19,000⁴³ over ten times the amount spent by the successful Republican candidate for governor in the 1914 primary election. Judge Murfin of Detroit testified that the Taft-Roosevelt primaries in that city were "absolutely the rottenest and most corrupt that Michigan has ever seen."⁴⁴ The Wilson-Harmon primaries were not much better; and as a matter of fact practically the same machine was engaged in manipulating both primaries.

A return to the convention system, therefore, while probably desired by many politicians is expected by few and seems hardly within the range of possibility. Experience with the direct primary, however, has brought disillusionments: the system is

⁴² Of course, various other reform proposals find adherents in Michigan. Some of these proposals, especially the short ballot and the preferential vote, would doubtless accomplish much good.

⁴³ Testimony before the Clapp committee. 62d Cong. 2 Sess., U. S. Sen. Doc. I, pp. 778-779.

⁴⁴ *Ibid.*, p. 976.

not popular, it has revealed serious shortcomings, and there is at present no public demand for its further extension.⁴⁵

⁴⁵ The tendency has been to retreat rather than to advance. An act of 1913 (No. 395) providing for the popular election of state central committees was supplanted in 1915 by an act (No. 231) which legalized the customary selection of the committees by the state conventions; and there is a justifiable demand for the repeal of the presidential primary law. "The utter futility of the presidential primary needs no further demonstration. It is a useless, expensive, and undesired innovation in our political system." *Detroit Free Press*, April 5, 1916. I have not seen the official canvass of votes in the primary of 1916, nor the statements of expenditures filed by candidates; but, so far as my observations have extended in 1916, they suggest no modification of the conclusions reached in this paper.

LEGISLATIVE NOTES AND REVIEWS

JOHN A. LAPP

Director Indiana Bureau of Legislative Information

Legislative Sessions 1916. The following States held regular sessions in 1916: Massachusetts, Rhode Island, New York, New Jersey, Maryland, Kentucky, Georgia, Louisiana, Mississippi, Virginia and South Carolina. The following States have held special sessions: Oklahoma, California, Illinois, Connecticut, Tennessee, and Massachusetts.

The Oklahoma legislature met and adopted a registration act, a usury act, and a measure to create industries at the state prison. The California legislature convened to revise the primary and election laws. The Illinois general assembly met primarily to pass laws for appropriations which had been declared unconstitutional. Tennessee legislators met to consider charges against certain county officers. Connecticut and Massachusetts convened their legislatures to authorize the soldiers on the Mexican border to vote.

J. A. L.

State Administration and Budget. Governors' Messages. Few proposals were made by the governors of the various States which had legislative sessions in 1916 touching reorganization of state government. The governors of three States—Rhode Island, Maryland and New York—made proposals regarding the budget system, and one governor only, Mr. McCall of Massachusetts, dealt with the subject of state administration from the standpoint of its organization for efficiency.

Of the three proposals for a budget system, that in New York was the most comprehensive. The subject of a budget has been of supreme importance in New York owing to the extent of the State's business and its growing complexities. An executive budget system was proposed in the new constitution which was rejected in 1915. Governor Whitman attempted to secure orderly budget procedure in the session of 1915 and 1916 but failed to secure the adoption of the plan.

The recommendations made by Governor Whitman in his message regarding the budget are as follows:

First. That the fiscal year end June 30 in order to eliminate the excuse for special and supply bills.

Second. That all appropriations for a fiscal year shall be in one appropriation act, except in case of emergency or of the creation of new departments.

Third. That all appropriations shall lapse at the end of the fiscal year.

Fourth. That all appropriations shall be made so as to describe clearly and specifically how state money shall be used.

Fifth. That appropriations for any one department or activity shall be expressed in items closely associated, so that knowledge of the total expenditures for each group or activity, instead of being scattered in a number of bills passed at intervals, are made the subject of one legislative consideration.

Sixth. That appropriations for salaries and wages shall be subject to schedules which are segregated from the rest of the act.

Seventh. That appropriations for expenses of maintenance shall be made subject to schedules classified according to kinds of expense and when required, apportioning these classifications to the activities or sub-activities for which they are established.

Eighth. That appropriations for a specific work or object should be segregated.

"It is in the preparation of these supporting schedules of appropriations that coöperation before final enactment between the legislature and the executive will be necessary, so that the total of the appropriation and the total of the schedules shall agree. Otherwise, to give the executive the opportunity to veto individual items of expense, it will be necessary for the legislature to make a separate appropriation for each of the items entering into these schedules."

In connection with the message, Governor Whitman submitted a suggested form of an appropriation bill. The legislature did not, however, follow the procedure outlined.

Governor Goldsborough of Maryland submitted his views of the budget system as follows:

"Contrary to the usual idea of a budget system (which is understood to mean an enumeration of governmental necessities which should be properly taken care of by levies) the State finds that in the adoption of this system it must accommodate its expenditures to probable receipts, the receipts becoming the fixed quantity to which the expenditures must adapt themselves. To do this with any degree of satisfaction or accuracy requires more time and study than the constitutional limitation of your sessions can possibly allow. It will, therefore,

become necessary to vest, by constitutional authority, in certain designated officials, the power to fix a maximum amount which may be appropriated by the legislature for any particular governmental purpose. It will require much research and special information to accomplish this and still leave the finances of the State flexible enough to meet the exigencies as they may arise subsequent to the fixing of the amounts needed for the support of the government. You will, no doubt, have before you various plans by which this may be done (and it does seem to be a necessity) and, therefore, I can only urge upon you the exercise of great care to the end that the mobility of government be not destroyed; as hard and fast rules frequently lead to greater hardships than existed before these apparent remedial and beneficial steps were taken.

"It would seem to harmonize better with our system of government to vest this power of fixing a maximum amount of appropriations for various government purposes—that is, an amount which the legislature can appropriate according to its own discretion—in the hands of the treasury officials, the comptroller and the state treasurer, who are supposed to possess that intimate and accurate knowledge of the state treasury's possibilities and limitations necessary to best accomplish the desired result. The reason for not including the governor as one of the budget commissioners is that by the exercise of his constitutional right of veto he could exert an afterthought with more freedom and effectiveness than were he bound by the recommendations or suggestions of a body of which he was a member, namely, the board of public works. Thus we would have two independent restraints upon the recommendations of the budget commissioners—the governor and the legislature."

Governor Beeckman of Rhode Island advocated reform in the following statement:

"I believe a distinct improvement can be made in the present method by the adoption of some form of budgetary system. A thorough canvass can be made of the several state departments and institutions prior to the convening of the general assembly, and an accurate estimate of their needs compiled and presented in convenient form for reference at the opening of the session.

"The appropriations fixed by statute, which, after such a canvass, are found not to require any increase or decrease, should be made continuing appropriations, and should not be considered annually by the legislature; while those which are found to be in need of revision

should be changed by statutory enactment. In this way, the diligence of the legislature and the finance committees could be more closely and effectively applied to those appropriations which vary in amount from year to year, and which must be based upon the fluctuating requirements of the departments to which they apply.

"It frequently occurs that bills calling for the expenditure of substantial sums are not presented until late in the session. This condition could be relieved by a provision of law making impossible the introduction of measures of this character after a certain period excepting upon recommendation of the governor.

"A financial survey of the various departments and institutions of the state has recently been made at my request and the information obtained will be submitted to you for your immediate use. I believe that the method I have suggested for determining the probable annual state expenditures in advance of the session not only will result in a material saving of time, but will tend to foster greater economy in the conduct of the state's business. I therefore recommend the enactment of the legislation necessary to carry such a system into effect."

Governor McCall of Massachusetts indicted the system of state government in vigorous language. "In my opinion," he said, "an unnecessary amount of expenditure is required in the mere work of administration. Our machinery of government is too complicated and expensive of operation. Very much could be saved by providing simpler mechanisms, and we should even then doubtless be sufficiently governed, and probably better governed. We have a hydraheaded system of administration with a minimum of central responsibility. We have more than one hundred different commissions and departments of administration, and the management of the business of the commonwealth is diffused and exercised through a multitude of little executives. The result is seen in a lessening of efficiency, in an increase of expense, and in a kind of government which can not be called popular. The people do not elect the members of the commissions. Each year at the election the contest centers upon the choice for governor, and the only vote which the people of the whole state give directly upon the general administration of their affairs is the vote they cast for governor. But some of the commissions have a greater administrative force than the central executive himself, and he stands in the shadow of a multitude of administrative agencies created by statute. No private business could be conducted successfully with such a lack of central control. The striking feature of business today

is seen in concentration, and in doing away, so far as possible, with separate mechanisms and organizations, with their lack of efficiency and their multiplication of expense. A great man of affairs recently expressed the opinion that if private business were conducted upon the system prevailing in our public affairs it could not stand competition with other concerns carried on according to modern methods, but would speedily become bankrupt.

"The first characteristic of a political organism is toward growth. It strives to augment its own power and to take unto itself the paraphernalia and trappings by which power is exercised. A law is enacted which its authors deem important, and they think to magnify its importance by the establishment of a special commission to carry it into effect. The commission may at first have only a single member, who will enter upon his duties in the most primitive fashion, but estimates for increases soon appear in what is called our budget, and it flowers out into an imposing little government, with expensive quarters, private secretaries, inspectors, stenographers and telephones, and in order to justify its existence the private citizen who is taxed to help pay for the expense is sometimes harried and subjected to unjust prosecution. Work is often duplicated. There is no twilight zone between commissions, but all doubtful areas are illuminated by the joint work and the multiplied expense of the boards which come in contact with each other.

"I have no doubt that the far greater number of the members of our commissions are excellent men. The objection exists against the system rather than against those who have become associated with it. I believe that the number of commissions should be greatly reduced. I am aware that reduction is no easy task. Men in the public service are apt patriotically to think that their service is necessary to the State, and it is human nature for them to oppose the discontinuance of their positions. But no one of us here today is worthy to be in the service of the people if he is willing to permit a useless expenditure of money, taken from them by taxation, in order to support any man in an unnecessary office, and I confidently rely upon your patriotism to consider only the good of the commonwealth, and not to be diverted from the performance of your public duty by any personal considerations."

Specifically, he recommended the consolidation of commissions on registration; second, that jurisdiction of the harbors of the commonwealth be given to a single board; third, the decrease in the elaborate

machinery and expense provided for the public service commission; fourth, that the unpaid board in charge of the insane asylums should be reestablished; fifth, the consolidation of the boards of labor and industry, minimum wage and industrial accident board should be accomplished; sixth, that a committee be selected to investigate the jurisdiction and work of the separate commissions to the end that reorganization might take place.

The governor declared: "The commonwealth must not abandon its great constructive works. It must continue its policy of building and maintaining good roads. It must continue also the development of its harbors, although it may hope to accomplish as good results without such an enormous expenditure as has recently been made. Its public institutions must be made to do the beneficent work for which they were designed; and it must not lag in the work of education. The chief hope of lessening expenditure lies in reducing the cost of administration, and if we shall deal resolutely with that subject I believe we may very materially lessen expense."

J. A. L.

Legislative Investigations. *Massachusetts.* The commission on economy and efficiency in Massachusetts was directed to conduct a special investigation of the amount and expense of printing done for each department of the State and the cost of distribution of public documents. The report was made in May, 1916. The same commission has been directed to make an investigation relative to the advisability of providing pensions for the needy blind.

The metropolitan park commission was authorized to investigate the necessity or desirability and the practicability of establishing camping grounds in the public parks of the metropolitan district.

A commission of three persons was provided for to be appointed by the governor, with the consent of the council, to investigate the advisability of abolishing the office of trial justice throughout the commonwealth and of annexing their jurisdiction to the police, district or municipal courts.

A special commission of three persons was appointed by the governor with the consent of the council to consolidate and arrange the general laws of the commonwealth upon the plan and general form and method of the existing revised laws.

The state board of labor and industries was directed to investigate the hours and conditions of labor prevailing in hotels and restaurants.

The board of education was directed to ascertain what facilities exist and what might be established to give special training and instruction to persons who have been injured and whose earning capacity has been destroyed or impaired.

A special commission of three persons was appointed by the governor "to revise and codify the laws relating to partitions and partition sales of real estate, sales for distribution, sales of real estate subject to reversions or vested or contingent remainders, or executory devise, assignments of dower, curtesy and homestead, and in fee to widows or widowers and to the establishing and protecting of the rights of tenants in common, joint tenants and of all persons having mortgages, attachments or other liens, undivided interests in real estate."

A special commission was created to investigate the subject of physical training for boys and girls in public schools and to define and recommend a system which will improve their physical, moral and mental qualities and provide the commonwealth with an adequate basis for a citizen soldiery with special reference to the following subjects: (a) Physical and disciplinary training; (b) military history; (c) personal hygiene and sanitation.

The report of the special commission on uniform methods and procedure for taking land for public purposes was submitted to the attorney-general for further consideration and for the preparation of bills.

Three persons were appointed a committee by the governor to investigate the matter of organizing the district police, and of establishing a state constabulary or police force which would relieve the militia from police duties.

A special commission composed of the economy and efficiency commission, a commissioner of education and three persons appointed by the governor was created for the purpose of investigating the subject of agricultural education as conducted by the Massachusetts Agricultural College and the development of the agricultural resources of the commonwealth.

The subject of habit-forming drugs and the effectiveness of the laws relating thereto is under investigation by a committee of three appointed by the governor.

The public service commission was directed to investigate the matter of receiving and delivering freight in the railroad freight houses in the city of Boston and the causes of delay in the loading and unloading of freight cars and to take necessary steps to the end that delays may be diminished and congestion relieved and charges made uniform.

A special commission composed of two members of the senate, four members of the house and three persons appointed by the governor was created to study the effects of sickness, unemployment and old-age in Massachusetts, and to collect facts as to the experience with the several forms of insurance, and to make and report together with drafts of bills to the legislature of 1917.

New York. The special commission created in 1915 to make an investigation of the public service commissions of the State with reference to their organization, powers and duties, and their administration, was continued to 1917.

A joint committee of the senate and house heretofore created was continued to investigate the report of the board of statutory consolidation and the simplification of the civil practice in the courts of the State and to investigate and inquire into all matters pertaining thereto.

A special committee created to "determine what legislation, if any, should be enacted to afford relief to the city of New York," was continued.

A special committee was created to investigate the allegations that the distribution of milk, butter, eggs, poultry and live stock is controlled by combination and monopoly of dealers to such an extent as to reduce production, impair quality, and unduly enhance the price to consumers.

A special legislative committee to investigate the use of lights on automobiles with a view to eliminating the glare headlights, and also the use of public highways by auto trucks and omnibuses, was created.

A special legislative committee was created to investigate and examine into the laws of the State in relation to the distribution and sale of habit-forming drugs and the manner in which such laws are enforced.

The committee on taxation was continued to make a final report in 1917.

A special committee created by the senate to investigate the civil service of the State was continued to 1917.

A special committee was created to investigate the subject of bridges outside of cities on the methods of construction and maintenance together with the general subject of the proper development of a uniform system of construction of bridges, culverts, and sluices.

New Jersey. The session laws of New Jersey for 1916 include authorizations or continuations of twelve special commissions and investigations. The commission on care of mental defectives, the com-

mission to investigate the desirability of establishing a system of pensions for state and municipal officers and employes, and the commission for the survey of municipal financing, were all continued. Newly created commissions are: a commission to investigate whether toll roads and bridges can be acquired by the State; a commission to investigate the problem of conserving fish; a commission to inquire into the observance, enforcement, application, operation and effect of the civil service law in the state, county and municipal governments and the advisability of amendments; a commission to investigate conditions in this country, experiences of states and foreign nations, character, expense, etc., with a view to establishing military instruction in high schools. The commission to ameliorate the condition of the blind was instructed to inquire into the causes of blindness, so that with the coöperation of the state board of health preventive measures might be adopted and enforced. Four commissions cover codifications or arrangement of various parts of the statutes, i.e., a commission to contract for a supplement to the compiled statutes of New Jersey to include laws of 1911, 1912, 1913, 1914, 1915; a commission to revise and codify state laws relating to cities and other municipalities; a commission to revise and codify the fish and game laws; a commission to revise, simplify, arrange and consolidate the primary and election laws of the State.

Maryland. The educational survey commission created in 1914 was continued so as to allow time for a survey of the higher educational institutions which it was found impossible to cover in the period originally allotted the commission and also continued the joint commission with the State of Virginia on fisheries industries legislation.

Kentucky. A commission to investigate conditions as to feeble-mindedness, with however, no appropriation for the State was authorized.

South Carolina. A state system of rural credit will be the subject for investigation by a special commission.

Highway Administration and State Aid. During the year 1915, the States expended \$53,000,000 in state aid for road construction. In addition more than \$27,000,000 of county and township money was expended under state supervision, making a total of more than \$80,500,000 of road and bridge expenditures managed by the States under the system of grants in aid. In ten years expenditures of \$263,350,000 of state money in aid of highway construction have been made, and

the annual expenditures have increased from \$2,500,000 in 1904, to \$53,000,000 in 1915.

This policy of grants in aid for highways began only twenty-five years ago when New Jersey established a state highway department, and began systematic construction and maintenance of highways. Since 1891, every State in the Union except Indiana, South Carolina and Texas, has established some form of highway department with powers ranging from mere advisory authority to minute control of local and state expenditures for highway construction and maintenance. Fifty thousand miles of roads have been constructed under the supervision of these departments up to January 1, 1916. The stimulus given to road construction by state aid has resulted in an increase of more than 250 per cent in road expenditures in ten years. The total expenditures for public highways in 1904 was \$80,000,000. In 1915 it was about \$282,000,000.

An analysis of the methods of supervision and control by the various States is, therefore, of the utmost interest and importance, and becomes of increasing importance in view of the recent appropriation of \$85,000,000 to be expended by the United States government in aid of the States in road construction and maintenance.

New Jersey, which was the first State to establish a state highway department, is also one of the States in which great authority is exercised over the local governments in road matters. It is also one of the few States which builds and maintains a state system of roads entirely at state expense. In aid of local units the State grants aid for the improvement of highways to the extent of 40 per cent of the total expended. The commissioner of public roads is entrusted with the execution of the law granting state aid. After conference with the boards of chosen freeholders in the respective counties, he passes upon aid in road improvement. The surveys, plans, estimates and specifications are made locally but are approved by the state commissioner before the local authorities advertise for bids. The contracts and bonds are examined and approved by the commissioner before work begins. When the work has been completed a written statement with entire cost data is submitted to the commissioner and if, after inspection, it is approved by him, the State's portion of the cost is paid to the county. When the roads are constructed, they are maintained by the counties, townships and municipalities. If a road is neglected, the state commissioner withholds payment of any money that may be apportioned to a county until repairs are made.

With many variations in detail the following States carry on highway work in a manner similar to that of New Jersey: New York, Massachusetts, Alabama, Arizona, Connecticut, Colorado, Tennessee, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Utah, Vermont, Virginia, Washington and Wisconsin. Many of these States build and maintain a system of state roads entirely at state expense, while others build roads only through aid to the local governments. Wyoming is building a system of state highways with convict labor, and California by means of a bond issue.

The other form of commission is the educational or advisory commission. The following States have an advisory or educational board or engineer: Arkansas, Delaware, Florida, Kansas, Kentucky, North Dakota, Nebraska, Oregon, South Dakota, and West Virginia. It is made the duty of the highway commission in all of the States giving state aid to give information and assistance to local officials regarding road construction.

Along with the control which the States exercise through the medium of grants in aid, there has grown up considerable centralized authority of state officials over local officials. Formerly, practically no authority was exercised by the state authorities over local road officials and in most of the States even yet, there is little authority outside of the control over officials in constructing and maintaining state roads and state aided roads. The State of New York is perhaps the most important example of centralized administration. A county superintendent is appointed by the board of supervisors in each county and if they fail to make the appointment, the state highway commission appoints. The county highway superintendent may be removed by the state highway commission upon written charges and is also subject to the rules and regulations of the state commission. The town superintendent of highways is elected by the people of the townships, but he is subject to the regulations of the state highway commission. Similar examples of centralization are found in New Mexico, Iowa, and Illinois.

The following States have a highway board or commission which is in some cases *ex-officio*. In other cases a state engineer is appointed to do the work under the board. Alabama, Arkansas, California, Florida, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin.

The following States put the matter in the hands of a single state engineer or highway commissioner: Arizona, Colorado, Connecticut, Delaware (for one county), Kansas, Kentucky, Michigan, Missouri, Nevada, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Vermont, and Wyoming.

Only six States have provisions in their road laws providing for the appointment of subordinates through civil service examinations. Illinois provides that all assistants, agents or clerks under the state commission, except the highway engineer and the assistant highway engineer, shall be subject to the civil service laws of the State. County superintendents of highways are also selected by examination by the state highway commission from persons proposed by the county board of each county.

Massachusetts places the appointment of subordinates under the civil service law of the State. The commissioner of public roads in New Jersey is authorized to employ a staff of qualified road inspectors certified as such by the civil service commission. New York provides that all subordinates be appointed subject to the civil service law. District and county superintendents of highways are selected by county boards from lists prepared from examinations. The Wisconsin civil service law covers the appointment of subordinates and also the appointment of the county highway commissioner. Kentucky, which has no civil service law, requires that the county engineer shall have passed a creditable examination given by the state commissioner of public roads.

J. A. L.

Federal Grants in Aid. The United States government has given vast amounts of money and lands in the last century to the States to aid in various matters. Over \$500,000,000 has been given to education alone. Most of the permanent state school funds have been formed principally from such grants. These grants were made outright. There were no conditions attached except their acceptance by the States. The grant of certain sections of land was conditioned that the money should be used for education. That was as far as the restrictions went and there was no means of enforcing even that.

The first large grant for agricultural and mechanic arts education—the Morrill act, made no restriction, simply providing that the States through the legislature should accept the grant and that the funds derived from the sale of lands should be kept intact “to the endowment, support and maintenance of at least one college where the leading ob-

ject shall be, without excluding other scientific and classical studies and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts in such manner as the legislatures of the States may respectively prescribe in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life."

Aside from the bare statement in the law that certain things should not be done such, for instance, as that no buildings should be erected or purchased out of the fund, and that money lost in any manner should be replaced by the States, there is no provision for making sure that the grants were to be spent "to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life." Indeed, the broad liberty given to the States to do about as they pleased in the establishment of such schools and colleges resulted in makeshift institutions in many States, and in no State was the original intent fully realized.

The so-called second Morrill act of 1890 gave further grants for agricultural education, but put no restrictions upon its use except the statement that if any part of the sum is diminished or lost or misapplied, it should be replaced by the State. It was further provided that the secretary of interior might withhold the appropriation if he determined that any State was not entitled to receive its share for any reason. An appeal lay in congress, however, to overrule the secretary of the interior. At most, all the secretary of the interior could determine were the mere formalities and not the real efficiency of the expenditure. Likewise in the act establishing the agriculture experiment stations—the Hatch act—the United States government donated money annually for the establishment of such stations in connection with agricultural colleges. Without any definite restrictions, succeeding acts carried the same provisions and gave no power to the national government to formulate or aid in the formulation of plans by which the expenditure was to be carried out or to determine the efficiency of the expenditure.

With the passage of the Smith-Lever act in 1914 a new principle was established in such grants. In this act it was recognized that the State and national government were to coöperate as partners in the promotion of a mutual object. The nation as the non-resident partner in effect said to the States, "We, in order to promote agricultural education for the farmer, will coöperate with you in the following way, namely: we will furnish a certain amount of money which will be

given to your State on condition that your State spends an equal amount and on condition also that the plans under which the money is to be expended shall be presented by the state authorities to the department of agriculture and receive their approval." The State as the resident in this scheme accepted the grants with the understanding that they would carry out the obligations imposed upon them by the grants.

This principle had been established in the grants for the maintenance of the state militia or national guard, but the conditions were somewhat different, namely: the duty was primarily a duty of the national government to maintain an army. The States had the authority to organize a militia. The national government merely recognized an opportunity to promote an army for its own purposes by aiding the States, and principally to make the discipline, equipment, etc., uniform so that the whole force could work together when mobilized for national service. The result of this coöperation has been effective. States have been compelled to maintain their militia at a good standard, and many cases have occurred where aid was withdrawn from the various units of the state militia because of inefficiency or inadequate equipment.

But in matters other than the army, the principle had not been applied until the passage of the Smith-Lever act. Since that time a new era has dawned in the matter of United States grants to the States in the aid of various projects. The good roads bill passed at the last session of congress is the most notable example. Instead of granting a sum of money to the States with the vague statement that it should be spent for the promotion of good roads, the act in question appropriated the sum of \$85,000,000 to be expended in a coöperative enterprise between the States and the nation. After deducting the amount necessary for administering the law, the secretary of agriculture is directed to apportion the amount due to each State but no money shall be expended except under certain conditions. The law requires:

"That any State desiring to avail itself of the benefits of this act shall, by its state highway department, submit to the secretary of agriculture project statements setting forth proposed construction of any rural post road or roads therein. If the secretary of agriculture approve a project, the state highway department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require: Provided, however, That the secretary of agriculture shall approve only such projects as may be substantial in character and the

expenditure of funds hereby authorized shall be applied only to such improvements. Items included for engineering, inspection, and unforeseen contingencies shall not exceed ten per centum of the total estimated cost of the work. If the secretary of agriculture approve the plans, specifications, and estimates, he shall notify the state highway department and immediately certify the fact to the secretary of the treasury. The secretary of the treasury shall thereupon set aside the share of the United States payable under this act on account of such project, which shall not exceed fifty per centum of the total estimated cost thereof. No payment of any money apportioned under this act shall be made on any project until such statement of the project, and the plans, specifications, and estimates therefor, shall have been submitted to and approved by the secretary of agriculture.

"When the secretary of agriculture shall find that any project so approved by him has been constructed in compliance with said plans and specifications he shall cause to be paid to the proper authority of said State the amount set aside for said project: Provided, That the secretary of agriculture may in his discretion, from time to time make payments on said construction as the same progresses, but these payments including previous payments, if any, shall not be more than the United States pro rata part of the value of the labor and materials which have been actually put into said construction in conformity to said plans and specifications; nor shall any such payment be in excess of \$10,000 per mile, exclusive of the cost of bridges of more than twenty feet clear span. The construction work and labor in each State shall be done in accordance with its laws, and under the direct supervision of the state highway department, subject to the inspection and approval of the secretary of agriculture and in accordance with the rules and regulations made pursuant to this act.

"The secretary of agriculture and the state highway department of each State may jointly determine at what times, and in what amounts, payments, as work progresses, shall be made under this act. Such payments shall be made by the secretary of the treasury on warrants drawn by the secretary of agriculture, to such official, or officials, or depository, as may be designated by the state highway department and authorized under the laws of the State to receive public funds of the State or county."

Whenever any road has been constructed under this coöperative plan its maintenance becomes a duty of the States and the civil subdivisions, and if the secretary of agriculture shall find that any road is

not being properly maintained, he gives notice to the highway commission and if within four months from the receipt of notice, the road has not been put in proper condition, then the secretary of agriculture shall refuse to approve any project for road construction in the State or civil sub-division, whose duty it is to maintain the road, until it has been put into a condition of proper maintenance. Here, then, is the coöperative arrangement worked out with extreme care to insure that the money of the national government granted to the States shall be expended efficiently for the purposes designed.

Likewise, in the bill reported by the national commission on vocational education to provide national aid, known as the Smith-Hughes bill, now pending in congress, national grants are proposed to the extent of \$7,000,000 annually. Initiative to start educational projects subject to national aid is to come from the States which must organize a state board of education with power to formulate plans. When these plans are formed they are to be presented to the United States board on vocational education, which approves the plans if it finds them in accord with the act, and disapproves them if it does not so find them. Not a dollar of United States money may be expended on projects which are not in strict conformity with the proposed law, which specifies in considerable detail what the States may do and how they shall do it if they are to receive national aid.

Almost identical with this proposition is the Newland flood prevention act, which provides for a coöperative scheme through which the local governments will pay a part of the cost of projects, particularly valuable to them and that all plans for such work shall be approved by the United States authorities.

The plan of grants in aid as pointed out has just recently been made effective as to national grants, but has long had a salutary effect in promoting projects by the different States through aid to local governments in the promotion of objects in which the State and local governments had a mutual interest. State aid to schools built up and standardized education throughout most of the States. State aid and supervision has revolutionized road building in practically every State in the union. State aid for charities, health and conservation have also been prominent in some States. As a means of effective government, these grants are the most powerful engines, and yet the discussion of their effect seems to have escaped the American publicist. In England Mr. Sidney Webb contributed a few years ago a remarkable little book entitled *Grants in Aid* in which he pointed out the tremendous

effects of such grants in English government. Grants in aid in England have been, however, much larger than such grants in this country. The results which Webb finds for England are the results which might be attained in this country. As summarized by Webb these results are:

"They furnish the only practicable method consistent with local autonomy of bringing to bear upon local administration the wisdom of experience, superiority of knowledge and breadth of view which, as compared with the administrators of any small town, a central executive department can not fail to acquire, for the carrying into effect the general policy which parliament has prescribed. Without in the least believing that there exists in any government office a special fund of administrative wisdom or that the inhabitants of the smallest town may not know best how to govern that town, there are usually some lines of policy and some directions of expenditure which in the common judgment of the community are better than others. Yet experience shows that some local authorities will at all times be backward in discarding the worse and adopting the better alternative. . . . Grants in aid should be so arranged as to give encouragement to expenditures which are deemed in the national interest desirable, rather than expenditures which are deemed undesirable." J. A. L.

Amendment of Statutes. *Constitutional Provisions.* In a country where the practice and product of legislative bodies is governed by a variety of constitutional provisions such as obtain in the States of the Union, one of the questions which must always command attention when proposals for uniformity are made is that of the feasibility of such uniformity under the existing constitution. It is the purpose of this note, therefore, to point out what are the constitutional provisions affecting the style of amendments to statutes, and to indicate to what extent uniformity of style in amending statutes is possible and feasible.

The style of an amendment has to do, not with the subject matter of which it treats, but with the form in which it is cast. The determination of the question to be considered must rest upon the answers to two other questions of a preliminary character, viz.:

1. What are the constitutional requirements with respect to the form in which amendments to statutes are to be cast?
2. What are the judicial conceptions that must be taken into account with regard to the form of amendment?

The constitutional requirements affecting the form in which amendments to statutes are cast may be classified into two groups: viz., the

positive or those which require that certain general forms of amendment be complied with, and the *negative* or those which prohibit the use of certain forms of amendment. In general there are two positive requirements relating to amendments only that appear in the constitutions of this country, though some of the requirements which apply to the form of other enactments apply to measures amending statutes as well. The first of the positive requirements is to be found only in the constitution of Tennessee, Article 2, Section 17, and reads: "All acts which . . . amend former laws shall recite in their caption, or otherwise, the title or substance of the law . . . amended."

Oddly enough, the very thing which is here imposed upon the legislature with respect to the form of amendments is the thing which fails to satisfy the constitution makers in very many of the other States. However, the practice of many of the other States conforms substantially to that which is so loosely laid down in the Tennessee constitution.

The other positive requirement is much more common and in various statements is to be found in the constitution of thirty of the States. It frequently reads as follows: "the section amended shall be inserted at length in the new act."¹ The principal variations in this statement are those in the constitutions of the States of Missouri and Virginia, both of which indulge in more detailed explanation of the intent of the constitution makers, and in the constitution of the State of Georgia, in which the phraseology of the provision renders the meaning more vague than in other States. There is, it will be noted, a surprising uniformity in the provisions of twenty-seven States, a uniformity which loses some of its force, however, in view of some lack of unanimity on the part of the courts as to the character and meaning of this requirement.

The negative requirement with respect to the style of amendments to statutes is usually bound up with, and just precedes, the second of the positive requirements just mentioned. It varies in phraseology very little in the twenty-five state constitutions in which it appears. The following statement of it is taken from the constitution of Illinois and is typical: "No law shall be . . . amended by reference to its title only."²

¹ Illinois Constitution, Article 4, Section 13.

² *Ibid.*

The principal variation from this wording is found in the insertion of the word "mere" before the word "reference," and the omission of the word "only" at the close. This variation is quite common. Exceptional wordings of the provisions are to be found in the constitutions of Missouri and Arizona, in each of which the meaning is expressed in fuller detail.

In addition to the constitutional provisions just cited which apply expressly to amending acts and no others, there are the constitutional requirements as to style which apply to all statutory enactments. The more common of these are those which provide that the enacting clause shall conform to specified phraseology, that no law shall be enacted but by bill, that no bill shall embrace more than one subject, and that the matter shall be expressed in the title. These provisions apply with the same force to enactments that seek to amend statutes as to other bills. The constitutions of nineteen States contain general requirements of this character, applicable in most cases to all acts, and in some cases to all but appropriation measures. In New York State, the twentieth, similar provisions obtain with reference to private and local bills only.

The purpose of these provisions is to prevent careless amendment, to check corrupt practices, to promote intelligent consideration of proposals submitted, and to simplify the statement of the statutes affected. There has been no conscious effort to seek uniformity in the style of amending statutes, or in the style of any legislation, and in practice uniformity does not, as a matter of fact, exist, even among States that possess constitutional provisions that are practically identical. This want of uniformity is due to a number of reasons. In the first place there has been little or no appreciation of the desirability of uniform practice; in the second place the constitutional provisions are broad enough to permit the adoption of supplementary rules widely differing in character in each of the two houses of the respective legislatures; in the third place the courts have failed to reach complete unanimity as to the meaning of constitutional provisions very similar in statement; and finally such variation in the phraseology as exists has contributed to the growth of variation in practice.

Judicial interpretation of constitutional provisions regarding the style of amendments to statutes has contributed somewhat to the absence of uniformity in practice. Even within States the courts have not failed to reverse interpretations once established and thus disturb legislative practice, though it should be said that in this case

the tendency has been to establish more liberal interpretations of the constitutional requirements. For example, the Indiana courts once held that the requirement that "the section amended shall be set forth . . . at full length" required the insertion in the amending act of both the section to be amended and the section as amended. A later decision accepts the insertion of the section as amended as sufficient. Between States the variation in interpretation is, of course, to be expected. In one State the court holds that the entire section affected must appear in the amending act, in another a paragraph, if numbered, and constituted as a subdivision of the section in which the change occurs may be inserted in the amending act and satisfy the same constitutional provision. An Indiana decision holds that the presence of the word "mere" in the prohibition "No law shall ever be . . . amended by *mere* reference to its title" requires reference to the title, thus making this statement of as much positive effect as the Tennessee provision noted in an earlier paragraph. In spite of the tendencies of some courts to emphasize technicalities, as in this case, their decisions are not of such momentous character even when they differ, because the constitutional provisions are so broad that it is difficult to see how the courts could prevent a considerable degree of uniformity if the legislatures were bent upon it. In fact the Indiana decision just noted, while appearing to split hairs, does not in reality impose anything upon the Indiana legislature that is not done in a good many States anyway, even where such decisions do not obtain, or where there are no specific constitutional provisions affecting amendments to statutes. On the other hand, if the Indiana court had held the contrary opinion it would not have prevented the Indiana legislature from conforming to the practice which the decision imposes upon it.

The question of the feasibility of a uniform style in amending statutes does not depend upon, though it must take into account, the practices regarding the citation of title, date, and number by which the original act, and acts amendatory thereof, may be readily located and identified. In this respect the practice of the States again varies greatly, and in this case the variation is due in part to the views of the courts as to what is the meaning of the word "law" or "section." Do these terms refer to the original enactment, or to the original enactment as amended by all subsequent changes, or only to the last amendment of the original enactment? All three views are expressed in the decisions of courts of different States, but it will be observed that if refer-

ence is made to the original enactment and to all subsequent amendments thereof the courts could hardly fail to be satisfied, whatever their views as to the meaning of the constitutional terms might be. Thus uniformity in the style of citation is not impossible. The question as to whether or not these States in which more lenient judicial opinion permits the first or third of the views indicated above to obtain will consent to adopt voluntarily the more exacting requirements which the second view imposes is one to which a negative answer will probably be returned.

In view of the foregoing the question of feasibility in the establishment of a uniform style of amending acts must be determined by the following:

1. How far do the constitutional provisions and judicial interpretations thereof permit of uniformity of style?
2. Is the degree of uniformity permitted great enough to be worth striving for—assuming that the results to be obtained from uniformity are desirable?
3. Are the advantages of uniformity of style sufficient to command the support and coöperation of a large proportion of American legislative bodies?

With respect to the degree of uniformity permitted it may be said that the constitutional requirements neither render it impossible, nor make its application a hardship. Substantial uniformity could be attained in all the States. Even the loosely drawn provisions in the Tennessee constitution accord with practice that is not uncommon; while the more detailed requirements of the constitution of Missouri might be accepted by the legislatures of other States without seriously altering the practice of many of them, or changing their constitutions, or bringing them into disfavor with their respective courts. The following shows the more important practices which might become uniform without encountering constitutional requirements or judicial veto:

1. Amending acts to be passed by bill.
2. Amending acts to embrace but one subject and that to be clearly expressed in the title.
3. Citation of the statute to be amended to be sufficient to identify it. In case of statutes previously amended the citation to include the original act and all amendments thereto.
4. A statement of the changes to be made, together with the phraseology of the statute or section to be amended and the same as amended. It is possible the latter alone would suffice.

The degree of uniformity indicated as permissible offers advantages from the standpoint of the legislatures and from that of the courts. It standardizes the form and style of amendment in the former, eliminates questions of constitutionality of form from the debate, and sets a premium upon intelligent and efficient efforts to amend former statutes. It will largely relieve the courts of the burden of passing upon questions involving the style of amending acts. The importance of these advantages taken apart by themselves might not be commensurate with the amount of effort that would be necessary to obtain their recognition in an independent movement for that purpose. But as a part of a larger and more general movement to improve the conditions of statute drafting and to standardize them, these advantages justify the efforts to realize a much larger degree of uniformity than now exists.

Whether there is any ground for believing that uniformity in the style of amending acts is a proposition that can command the interest and coöperation of any large proportion of American legislatures appears questionable. The constitution of North Carolina makes no provision whatever for the style of any legislation. The constitutions of seventeen States omit to mention the style of amending bills in particular. The freedom which these constitutions and others with only very limited provisions permit to the legislatures of these States will probably not be surrendered in all of them, no matter how great the pressure. On the other hand it should be noted that actual legislative practice with respect to the style of acts amending statutes often conforms to features embodied in the uniformity proposals herein made. This is true in some of the New England States, notably Massachusetts, the constitution of which does not limit the legislature in this particular.

In summarizing one may conclude: (1) that some tendencies toward uniformity in style in amending statutes are already noticeable both in the constitutional provisions and in the voluntary practices of legislatures in States where such provisions do not exist; and (2) that the constitutional requirements and judicial interpretations thereof do not conflict seriously with each other. Therefore, the feasibility of establishing a much greater degree of uniformity of style, when considered as a part of a general movement for the betterment of legislative practice, appears to be demonstrated.

RUSSELL McCULLOCH STORY.

University of Illinois.

NEWS AND NOTES

PERSONAL AND BIBLIOGRAPHICAL

EDITED BY CHARLES G. FENWICK

Bryn Mawr College

The thirteenth annual meeting of the American Political Science Association will be held December 27 to 30, at Cincinnati. The American Historical Association will hold its annual meeting at the same time and city, and several joint sessions will be held. The program, as thus far arranged, will be as follows: Wednesday evening, December 27, "The Veto Power of the Governor," papers by Prof. John A. Fairlie and F. A. Cleveland, discussion by Governor Frank B. Willis of Ohio, N. H. Debel, Edgar Dawson and Chester Lloyd Jones. On Thursday morning, there will be two simultaneous sessions, one on "Municipal Administration," with papers by ex-Mayor Henry T. Hunt of Cincinnati and Henry M. Waite, city manager of Dayton, and one on "Latin-American Politics," with papers by F. A. Pezitt, ex-minister from Peru and George E. Roberts, to be followed by discussion. On Thursday noon there will be a joint luncheon with the historical association. On Thursday afternoon there will be a session on Social Legislation, with papers by Prof. Samuel L. Lindsay and Thomas I. Parkinson; and at the same time a round table conference on the teaching of civics in secondary schools. At a joint session on Thursday evening, the annual addresses of the presidents of the two associations will be given. The Friday morning session will discuss the subject of military administration in the United States. On Friday noon a number of group luncheons are planned, to discuss the teaching of constitutional law, book reviewing in political science, bureaus of reference and research, training for public service, and requirements for the doctor's degree in political science.

The business meeting of the association will be held on Friday afternoon; and on Friday evening there will be a session on the United States national administration. On Saturday morning there will be another joint session with the historical association on the Philippines; and on Saturday noon a joint luncheon with the American

Association for Labor Legislation for the discussion of social insurance in the United States.

Early in December programs will be mailed to members of the political science association giving information as to the titles of papers, names of speakers, railroad and hotel arrangements and social functions.

A general index to the ten volumes of proceedings of the American Political Science Association and to the first ten volumes of the American Political Science Review is being prepared, and will be issued as a supplement to the Review.

Dr. Edwin M. Borchard has resigned as law librarian of congress to accept a position as counsel to the National City Bank of New York.

Mr. J. S. Young, professor of political science at the University of Minnesota, is away on sabbatical leave for the year. He will spend most of his time at the Congressional Library in Washington.

Mr. C. D. Allin, associate professor of political science at the University of Minnesota, has been advanced to the position of professor of political science.

Mr. William Anderson, who held the position of assistant in government at Harvard last year, has been called to the University of Minnesota with the rank of instructor in political science.

Mr. B. A. Arneson, Ph.D., University of Wisconsin, has been appointed an instructor in political science at the University of Minnesota.

Mr. S. A. Park, assistant in political science in the University of Wisconsin has been appointed to an assistant professorship in the University of North Dakota.

Mr. Henry R. Trumbower, of the department of political economy of the University of Wisconsin, has been appointed a member of the railroad commission of that State.

Prof. Paul S. Reinsch, American envoy extraordinary of the United States to China, has been instrumental in organizing the Chinese Political Science Association; he acts as its first vice-president. The association publishes a quarterly which will be devoted to political science and social developments with special reference to China, the first issue appearing last April.

Dr. A. C. Millsbaugh, Ph.D., Johns Hopkins University, has been appointed acting-professor of political science at Whitman College, Washington.

Prof. J. M. Callahan, head of the department of history and political science at West Virginia University since 1902, has been elected dean of the College of Arts and Sciences of that institution. He will, however, continue his lectures in two advanced courses.

At the opening of the current academic year, Dr. John E. Briggs and Dr. Ivan L. Pollock were appointed assistants in political science at the State University of Iowa.

Mr. W. Kendall Dingleline has been made instructor in political science at the University of Virginia.

Prof. Thomas H. Reed, of the department of political science of the University of California, who drew up the original draft of the new city manager charter of the city of San José, Cal., was chosen city manager following the adoption of the charter.

Prof. Charles A. Beard, of Columbia University, has given up undergraduate work at Columbia University to devote himself entirely to the post-graduate school.

Prof. Howard L. McBain of the same university has in like manner given up his undergraduate lectures on municipal government to devote his attention to graduate study. Prof. Munro Smith will be on leave of absence for the second half year. Leyton Carter, a graduate of Oberlin and candidate for the doctor's degree at Columbia, will be an assistant in the department of politics for the coming year; and Luther H. Gulick, a graduate of Oberlin, and F. Stewart Fitzpatrick of Trinity College will act as readers.

A new department of political science has been established this year at the University of Wyoming, in charge of Prof. H. C. Dale, A.M., Harvard, 1908, who was formerly connected with the Utah Agricultural College and with Washington University, St. Louis.

The University of Wyoming announces this year a definitely organized pre-legal course covering two collegiate years, and preparing students for admission to standard law schools. Lectures in the course on introduction to law will for the most part be given by members of the Wyoming bar.

The problem of assisting in the educational training of foreigners who are applicants for naturalization is being taken up by the University of Wyoming. Special classes in coöperation with the naturalization service of the department of labor are to be formed in Laramie and Cheyenne and perhaps in other places. This work is a part of the extension service of the university.

The Third National Conference on Universities and Public Service, E. A. Fitzpatrick, Box 380, Madison, Wis., secretary, will meet at Philadelphia on November 15, 16.

The Association of Urban Universities, F. B. Robinson, College of the City of New York, secretary, will hold its annual meeting in New York, November 17, 18.

The National Municipal League will hold its annual meeting at Springfield, Mass., November 23, 24, 25. During the same week meetings will also be held in Springfield by the City Managers' Association and a number of other organizations.

The annual lectures on the Barbour-Page Foundation at the University of Virginia will be delivered in January by Prof. John H. Wigmore, dean of the law school of Northwestern University, whose subject will be "The Growth of Law." Last year's lectures on "The Origin and Formation of the Triple Alliance," by Prof. Archibald Cary Coolidge of Harvard University, are in train for early publication.

The report of the committee of the American Political Science Association on the *Teaching of Government* (The Macmillan Company) includes four parts: (1) recent progress in the teaching of government;

(2) teaching of civics in secondary schools; (3) suggestions as to courses of study; and (4) teaching of political science in colleges and universities. An appendix summarizes the reports of committees in twenty States on the teaching of civics in elementary and secondary schools.

The fourth volume in the series of guides to foreign law, published by the law division of the Library of Congress, will come from the press about the first of January. It is a *Guide to the Law and Legal Literature of Argentine, Brazil and Chile*, prepared by Dr. Edwin M. Borchard, law librarian.

Principles of American State Administration, by Prof. J. M. Mathews of the University of Illinois, is the title of a new work which is in train for publication by Messrs. D. Appleton & Company. It is a comprehensive treatise on the executive department of the American state governments, and is divided into four parts, as follows: Part I, General Principles; Part II, The Organization of the Administration; Part III, The Functions of the Administration; Part IV, The Reorganization of the Administration.

South America: Study Suggestions, by Harry Erwin Bard (D. C. Heath and Company) is a little booklet containing a short syllabus and a bibliography of books on South America, with brief descriptive notes.

The Voter in Command is the title of a small volume by J. Albert Stowe (Newark, 1916, pp. 62) dealing with the commission form of government in New Jersey. The author criticizes the Walsh act of 1911, shows its good features, and points out the various ways in which it has failed to meet the needs of the situation in New Jersey.

Two recent bulletins of the Indiana Bureau of Legislative Information deal, one with *The Budget* by William T. Donaldson, assistant budget commissioner of Ohio, and the other with the *Control and Supervision of State Institutions*. Both pamphlets are clearly written and are good models of the way in which administrative reforms may be presented to the public as practical problems within the grasp of the average voter.

Bulletin No. 10 of the Nebraska legislative reference bureau deals with *The Torrens Land Transfer Act*, including the Nebraska act of

1915, a historical sketch of the Torrens system, arguments for and against, and a bibliography. A new and revised edition of the valuable bulletin on *Legislative Procedure* is announced.

The legislative reference division of the Texas State Library has recently issued a bulletin on *Officers, Boards, and Commissions of Texas*. The bulletin was prepared by Frank M. Stewart, assistant in the school of government in the University of Texas, and is the first of a series in preparation by the bureau of research on state government at the university.

A commission on economy and efficiency has been appointed by Governor Stuart of Virginia in pursuance of an act of the general assembly. The commission had its inspiration in the financial stringency that the budget-makers of the legislature faced at the opening of the past session, and it is charged with the duty of making a careful and detailed study of both state and local government to be followed by a report suggesting methods of more efficient and economical administration.

Minnesota Municipalities, the new bi-monthly magazine devoted to municipal progress in Minnesota, contains in its second (April) number an article by Prof. W. A. Schaper on "The Need of a Constitutional Convention in Minnesota" in which the writer advocates a systematic revision of the state constitution, pointing out that the present amending process, which requires for the adoption of an amendment a majority vote of all the electors voting at a general election, is a block to all constitutional progress.

A vast storehouse of information on municipal administration in England and Wales will be found in the *Encyclopedia of Local Government Law*, to and including 1915, edited by Joshua Scholefield (New York, N. A. Phemister Company, 1916, 13 volumes, price \$85). The work shows the trend of advanced legislation on municipal government in England, and covers such topics as Sanitation, Regulation of Street Traffic, Prisons, Lodging Houses, Factories and Work Shops, Housing of the Working Classes, Child Labor, etc.

Princeton University has recently entered the field of university extension work by its coöperation with the League of New Jersey

Municipalities established last spring. The league includes in its plans a bureau of municipal research and information which is to be organized as part of the Princeton University library, so that from the point of view of the university the bureau will serve as a municipal reference section for the use of faculty and students, while from the point of view of the league the bureau will furnish reports on any subject in the field of municipal government upon request of any of its members. The director of the bureau will be an officer of the league and at the same time a member of the university faculty.

The experience of western Canada in the municipal ownership and operation of public utilities is presented by A. G. Christie in a pamphlet entitled *The Municipally-Operated Electrical Utilities of Western Canada*, being a paper read before the convention of the American Institute of Electrical Engineers in February, 1916. The author discusses the costs and methods of financing the utilities of various cities, and while not formally endorsing public ownership, he finds that the utilities in question have on the whole been conservatively managed and have been practically free from political influence.

An interesting discussion of the rule of *stare decisis* in constitutional law, and of the force of precedent and the power of the courts to make law is found in a pamphlet by Samuel B. Clarke entitled "What may be done to enable the courts to allay the present discontent with the administration of justice?" (New York, 1916, pp. 41). The pamphlet is a reprint from the *American Law Review*, and advocates an amendment to the constitution of New York providing that the interpretation by the courts of the constitution and statutes of the State be in each case without prejudice from anything decided in any other case, although the court may give due weight to precedents as evidence of the law.

A new edition of Dante's *De Monarchia* has appeared from the Clarendon Press (Oxford, 1916, pp. xxxi, 339-376 of the Oxford text). The text is edited by Dr. E. Moore and is preceded by an introduction on the political theory of Dante by W. H. V. Reade. Mr. Reade points out that the *De Monarchia* is less a political pamphlet giving expression to the views of a party than the vision of an exile and a poet who would secure the triumph of justice and the peace of warring peoples by the establishment of an absolute monarchy having jurisdiction over

all nations by the authority of God. By contrast with Machiavelli, Dante is the advocate of international unity (however mistaken he may have been in his method of attaining it) whereas the author of *Il Principe* is the prophet of national independence with its resultant international anarchy.

A useful discussion and criticism of present political conditions in India is to be found in volume v, number 1, of the University of Iowa studies in the social sciences, entitled *Some Aspects of British Rule in India* by Sudhindra Bose, lecturer on oriental politics in the state university. While the author is not unappreciative of the many solid advantages of the British administration, his chief object is to point out certain evils in the British rule and to suggest constructive reforms. The volume may be read in connection with *Young India*, an interpretation and a history of the Nationalist movement from within, by Raya Lajpat (Huebsch, 1916, pp. 301) in which a leader of that party presents the historical background and the story of the movement, and sets forth what India wants and why she should get it.

Though historical in character and popular in its presentation there is much interesting information in the volume entitled *Presidential Nominations and Elections*, a history of American conventions, national campaigns, inaugurations and campaign caricature, by Joseph B. Bishop (New York, Scribner's Sons, 1916, pp. x, 237). The early nominating conventions are described as well as the pre-Revolutionary caucus (that inevitable aristocratic concomitant of democracy) and there is an orderly and vivid presentation of the successive battles for political power which mark the long contest between the opposing ideals of Hamilton and Jefferson.

As in the author's earlier volume, *The People's Government*, there is much sound thinking on the subject of American political ideals in *Americanism, What It Is* by David Jayne Hill (New York, D. Appleton and Company, 1916, pp. xv, 280). The opening chapter on the American conception of the State points out the distinctive contribution of America to political theory and practice, namely that while the will of the people should be in general the law of the State, yet there were certain human rights possessed by the individuals composing the State which were so sacred and so essential to human happiness that they should never be taken away even by the "law of the land" enacted by

an omnipotent legislature. This protection of individual rights against encroachment even by a majority of the people, and the constitutional rule that the individual may sue for those rights in court, setting up the fundamental law as against the temporary whim of a popular assembly, constitutes the essence of Americanism. But this traditional system of government by law is, says the author, now being attacked by a spirit of class antagonism which "aims to control the State by massing its forces in powerful organizations with the purpose of changing the laws, and even the constitution, in the interest of special classes." In the chapter on the "Tests of American Democracy," the author asserts that the only hope for the survival of Democracy as against its rival Imperialism, whether in the form of single rulers or of majorities, is in the exercise of self-restraint on the part of the citizen body by putting a voluntary limitation upon its own power.

The interrelations of sociology and politics resulting from the gradual extension of the field of social legislation are becoming daily more evident, and are claiming a place in the literature of both subjects. A small text-book on *Sociology* in the National Social Science Series by John M. Gillette (Chicago, A. C. McClurg and Company, 1916, pp. 159), while prepared for the general public as an introduction to the study of sociology, will be useful in acquainting the student of politics with the terminology (alas, already become esoteric) and with the point of view of the sociologist. *Social Problems* by Ezra Thayer Towne (New York, The Macmillan Company, 1916, pp. xviii, 406) contains chapters on Immigration, Child Labor, The Sweating System, Labor Organizations, Crime and Punishment, the Liquor Problem, and other related subjects, most of which are the object of the newer social legislation in the various States. The questions, references and supplementary readings at the end of each chapter give an additional value to the book. *Poverty and Social Progress* by Maurice Parmelee (New York, The Macmillan Company, 1916, pp. 477), in spite of its tendency to dogmatize and to pass final judgments where there is much room for doubt, contains much valuable material concerning the causes and conditions of poverty and the possible remedial and preventive measures. The chapters dealing with social insurance, wage legislation, the labor supply, industrial democracy and political reorganization will be found of particular interest.

Of considerably greater value than his previous volumes on the law of labor is the new volume by George G. Groat entitled, *An Intro-*

duction to the Study of Organized Labor in America (New York, The Macmillan Company, 1916, pp. xv, 494). The author is convinced that there is need of a more thorough understanding of labor organizations which constitute the center of the problem of labor and which, he says, embody "the aggressiveness, the restlessness, the hopes, the fears and the ideals of American laborers." The background of organized labor is first presented and this is followed by the structure of the various organizations. "Collective Bargaining" discusses the strike, arbitration, the boycott, the closed shop and other similar measures resorted to in furtherance of the aims of organized labor. These measures are discussed from their legal as well as their social and economic aspect, and this chapter as well as the following chapter on "Political Activity" will be of considerable value to the student of politics. The author admits that the volume may seem to place undue emphasis upon a side favorable to the unions, but he disclaims a thick-and-thin support of them regardless of what they do, and while believing that they have a heavy responsibility he "shares with many a doubt as to the fulness with which they meet such obligation."

A useful sketch of *Russian Foreign Policy in the East* comes from the pen of a Russian, Mr. M. S. Stanoyevitch of the University of California (Oakland, Liberty Publishing Company, 1916, pp. viii, 38). "Russia in the Near East," "Russia in the Middle East" and "Russia in the Far East" constitute the first three chapters, and a final chapter discusses Russian policy after the Japanese War. The author's attitude; however, is not critical, and while we may pardon a general tendency to justify the policy of one's own country it is difficult to do so where that involves a slur upon the policy of other nations, as in the characterization of the demands of the western powers for compensations and guarantees after the Boxer riots as "inordinate" when Russia was herself planning annexation meanwhile.

Houghton Mifflin Company announce the publication in October of the second volume of *International Cases*, by Ellery C. Stowell and Henry F. Munro, dealing with the subject of "War and Neutrality." The first volume, dealing with "Peace," appeared in April. With the first volume is included a pamphlet entitled "Parallel Readings," prepared by the authors for use in their classes, and containing a list of references to some of the more important text-books in the English language.

Dr. Lawrence B. Evans has followed up his collection of cases on constitutional law by a new volume of *Leading Cases on International Law* (Chicago, Callaghan and Company, 1916, price \$2.50). The editor draws his cases from a wide variety of tribunals and has annotated them with references to the leading commentaries and to numerous other cases. While the majority of the cases deal with more settled doctrines of international law, a number of recent cases are included showing the modern application of those doctrines.

Ex-senator Elihu Root's distinguished services in the field of international law and foreign affairs give to the new collection of his *Addresses on International Subjects* (Harvard University Press, 1916, pp. 463) a value and significance entirely unaffected by the bias of partisan politics. His addresses as president of the American Society of International Law are of a strictly scientific character, though frequently illuminated by observations showing the result of long familiarity with the business of diplomatic intercourse, while his addresses as secretary of state and as United States senator are marked by an idealism which has won for Mr. Root praise alike from political friend and foe. Perhaps the work for which he will be best remembered will be his continued efforts to advance the cause of Pan-Americanism.

Baker, Voorhis and Company announce a new (fifth) edition of Wheaton's *International Law* revised throughout, enlarged and rewritten by Coleman Phillipson with an introduction by Sir Frederick Pollock (in one volume, price \$11.00). In the present edition the numerous references given by Wheaton to the works of the classic writers on international law have been retained, while many subjects which were treated sparsely in the previous edition are covered with comparative fulness since they have become important as a result of the labors of the Second Hague Conference and the London Naval Conference. The same publishers likewise announce the publication of *The Prize Code of the German Empire*, as in force July 1, 1915, translated and edited by Charles H. Huberich and Richard King (pp. 200, price \$2.50).

A very sane bit of thinking on the subject of international relations is presented in the slender volume entitled *The Dangers of Half-Preparedness* by Norman Angell (New York, G. P. Putnam's Sons, 1916, pp. 129). The meaning of the somewhat misleading title is that to

be adequately prepared against attack from without we need something more than armaments alone; we need an understanding on the part of our neighbor of the foreign policy which our armaments are intended to support, so that instead of anticipating that our armaments are to be used against him and building equally powerful armaments in turn he will coöperate with our policies (assuming them to be just) or at any rate will be disarmed of any suspicion regarding them. The author constantly refers to concrete instances of wars during the nineteenth century which occurred simply because the nations instead of defining their policies and making clear the purposes of their armaments preferred to seek protection in a balance of power which by its very nature could not be stable. The author's closing plea for a more earnest deliberation by the American people upon the future policies of their country is a very stirring one.

In his volume on *The Diplomatic Background of the War, 1870-1914* (New Haven, Yale University Press, 1916, pp. xv, 311), Prof. Charles Seymour enters a comparatively new field occupied hitherto by a few excellent general histories, such as those of Phillips, Rose, Andrews, and Hazen, and by biographies and special treatises not generally accessible. Beginning with a study of Bismark's creation of the Triple Alliance and of the Dual Alliance which followed it, the author passes to a discussion of German world policy both in respect to its economic and its moral factors. This is followed by a consideration of British foreign policy and of the diplomatic revolution by which England put aside her policy of opposition to France and Russia. The conflict of the two alliances is next described, and the closing chapters deal with the Balkan wars and the crisis of 1914. In addition to a brief bibliography arranged for each individual chapter the author gives frequent references in foot-notes, though for the most part to secondary sources. While there is still room for more exhaustive work in this field, based upon original documentary evidence, Mr. Seymour's volume will do much to facilitate the study of diplomatic history, and to arouse an interest in a subject which must henceforth have a more prominent place in the curriculum of universities.

Henri La Fontaine, senator of Belgium, has proposed a plan for world organization in the interest of peace, under the title *The Great Solution—Magnissima Charta* (World Peace Foundation—Boston). This includes a draft of the proposed charter and a series of supplementary

conventions, preceded by a discussion of the plan presented. The charter contains declarations on the rights and duties of states; the conference of states, judicial organization, international administration and general and transitory provisions. The Conference of States is to combine diplomatic and legislative characteristics. But the plan contains a fundamental weakness in proposing to continue the fiction of the equality of states, by giving each state only one vote. A proposal that a majority of states may adopt a convention binding the majority, but not the opposing minority, is set forth as a novelty; whereas a majority or even a minority of states may now agree to any convention as between themselves. The plans for judicial and administrative organization involve the reconstitution and development of existing institutions.

The Restoration of Europe by Dr. Alfred H. Fried (New York, The Macmillan Company, 1916, pp. xiv, 157) is an exceptionally interesting contribution to the daily increasing literature in which constructive proposals are offered as a basis for the future peace of the world. The author is the well-known editor of the pacifist journal, *Die Friedenswarte*, and his long service in the cause of scientific pacifism as well as the fact that he was the recipient of the Nobel Peace Prize in 1911 will win for him a sympathetic hearing. It may be difficult for many to acquiesce in his exoneration of Germany and Austria from any special blame in bringing on the war, but few will deny the justice of the basic idea of the volume, that if we distinguish the underlying causes from the immediate occasions of the war we find that the present war is the logical outcome of the kind of "peace" which preceded it, a peace which in view of the condition of international disorganization which prevailed was really a state of latent and constantly threatening war. While disclaiming the need of a political federation of Europe the author advocates a closer economic association in the form of a coöperative union, for which he considers the Pan-American Union a valuable precedent, and suggests a general European alliance to replace the system of the balance of power, together with "some method" of international control by which armaments could be reduced by the individual nations without danger from a surprise attack. In conclusion the author distinguishes between the pacifism of unconditional disarmament and the pacifism of international organization as a condition precedent to disarmament.

DECISIONS OF AMERICAN COURTS ON POINTS OF PUBLIC LAW

JOHN T. FITZPATRICK

Law Librarian, New York State Library

Advertisements—Licensing. State vs. Murphy. (Connecticut. July 27, 1916. 98 A. 343.) It is not an arbitrary and unwarranted interference with a lawful business to require the issuance of a license and the payment of a license fee for the display upon real estate of advertisements containing more than four feet of surface. Such a regulation is within the taxing power of the legislature. The taxing power is vested in the legislature and it may exercise such power for lawful purposes in its discretion both as regards the subject matter of taxation and the extent and manner of the tax, except as constitutional limitations may intervene. And such power extends to persons, property, possession, franchise and privileges, occupations and rights, and reaches every trade or occupation, every object of industry, use or enjoyment. The display on a billboard or similar advertisement upon real property is a proper subject of taxation and the taxation thereof is a reasonable exercise of the taxing power.

Advertisements—Prohibiting Affixing on the Palisades. State vs. Lamb. (New Jersey. June 6, 1916. 98 A. 459.) To prohibit by legislative act the painting or printing upon or, in any manner placing upon or affixing any advertising notice to any of the steep rocks called the Palisades, on the Hudson River, is unconstitutional as depriving the owners of lands situated in the Palisades from using such lands for the purpose of advertising, when the signs do not endanger public safety or affect the health or morals of the community.

Advertisements—Publication of False and Fraudulent. Jasnowski vs. Connolly. (Michigan. June 2, 1916. 158 N. W. 229.) "An act to regulate and prohibit false, deceptive, fraudulent and misleading advertising in newspapers, periodicals or other publications or by circulars or hand bills," is not unconstitutional as embracing two inconsistent subjects, prohibition and regulation, since the word "regulate" may be disregarded as surplusage. Nor is it unconstitutional for the same reason because the inhibition is extended to books, which are not mentioned in its title, since, under the rule of *ejusdem generis*, books are included with other publications.

Aliens—Chinese Persons. Ong Seen vs. Burnett. (United States. May 8, 1916. 232 Fed. 850.) The mere fact that a Chinese person admitted into the country and domiciled as a merchant thereafter becomes a laborer does not justify his deportation under a treaty between China and the United States authorizing the deportation of Chinese persons who are laborers. But the fact that the Chinese person, almost immediately upon his arrival, engaged in the occupation of a peddler, instead of a merchant, warrants a finding that he was admitted as a merchant under fraudulent representations, it appearing that he never engaged in business as a merchant.

Commission Government—Abandonment. State ex rel. Terry vs. Lanier. (Alabama. May 18, 1916. 72 S. 320.) An act providing a mode whereby cities, after an election on the question, may abandon the commission form of government and return to the aldermanic form, and providing for the retention in office of all employees, other than those whose offices are abolished, until their removal should be provided for by the mayor and aldermen of the city, does not violate a provision of the constitution providing for the impeachment of officers, as the act abolishes and does not remove the officers not retained, and as the officers retained whose offices were created or abolished by the commissioners have no fixed statutory office or term, and hence are not officers protected by the constitution. The commissioners have no vested right in their offices, which may be abolished at the will of the legislature.

Commission Merchants—Regulation. State ex rel. Brewster vs. Mohler. (Kansas. June 29, 1916. 158 P. 408.) An act which regulates the business of commission merchants who sell farm produce for resale is not unconstitutional as discriminatory or class legislation. And it is a valid exercise of the state's police power to require such commission merchants to make and furnish to the consignors of goods intrusted to them for sale on commission an accurate and detailed account of all the pertinent facts relating to such sales on commission; and the expense of making such a record and account is a proper charge upon the business and is not confiscatory.

Contempt of Court—Punishment. Flannagan vs. Jepson. (Iowa. July 7, 1916. 158 N. W. 641.) It is an unconstitutional authorization of infamous punishment to provide imprisonment at hard labor

as punishment for second or subsequent contempts for violation of liquor injunctions, in a proceeding not upon indictment or information. A crime is an offense against the sovereignty of a state for which upon conviction punishment is imposed, while a contempt is an offense against the authority of the court. So a statute imposing imprisonment at hard labor for contempt is unconstitutional as subjecting the accused to involuntary servitude for an offense not a crime.

Courts—Reversal of Former Decisions. Grifenhagen vs. Ordway. (New York. July 11, 1916. 113 N. E. 516.) A court should not undermine the law by reversing a former decision of that court unless it has been demonstrated to be erroneous through failure to consider a statute, prior decision, material fact, or other substantial feature, or unless through changed conditions it has become obviously harmful or detrimental to society. Certainty is of the very essence of the law. Shifting or changing rules or principles do not constitute law. The avoidance or prevention of litigation through the establishment by the courts of fixed and certain rules is a useful and beneficent effect of the litigations had.

Dentistry. People vs. Blair. (Michigan. July 21, 1916. 158 N. W. 889.) The title of an act providing for the examination, regulation, and licensing of persons engaged in the practice of dentistry, and for the punishment of offenses against the act, is broad enough to admit of an amendment, made under the original title, prohibiting any qualified physician or surgeon from extracting teeth except in certain emergencies, and forbidding such physician to advertise dental operations of any kind.

Elections—Absent Voting. Straughan vs. Meyers. (Missouri. July 3, 1916. 187 S. W. 1159.) An act regulating the manner in which voters who are absent from their place of residence may cast their votes, does not violate the constitutional provision requiring as a qualification to vote that the elector shall have resided in the county, city, or town where he shall offer to vote at least sixty days immediately preceding the election, since under such law, which specifically provides that the ballot shall not be deposited in the ballot box nor entered upon the poll books, but that the same shall under certain safeguards be transmitted to the county clerk and be there counted, the vote takes effect as required by the constitution, only in the place of his resi-

dence, although the voter exercises the means of voting elsewhere. Such an act is not class legislation because it applies to all persons alike who by reason of their business duties are unavoidably absent from the county.

Elections—Corrupt Practices. State vs. Pierce. (Wisconsin. June 13, 1916. 158 N. W. 696.) It is a violation of the constitutional provision providing that every person may freely speak and publish his sentiments, and prohibiting laws restraining the liberty of speech or the press, to forbid a person, not a candidate or a committeeman, spending money outside his own county for political purposes. Under the terms of such an act a man, or body of men, who are honestly convinced of the necessity of a change of policy in the government, commit a crime if they spend any money in another county than their own in bringing their views to the notice of the voters of such other county. Under such a law no pioneer in any reform which depends for its success on a change in the law could leave his own county and communicate his sentiments at his own expense to his fellow citizens in other counties without committing a crime. Under such a law no propaganda for better laws and better political conditions which has not been formally taken up by a political party can ever be carried on, as it is always highly improbable that a political committee will take up such a work for the very good reason that the party organization has not endorsed the doctrine.

Elections—Free and Open. Neelley vs. Farr. (Colorado. June 21, 1916. 158 P. 458.) Where coal companies connived with the local authorities to secure the creation of election precincts bounded so as to include the private property of the companies only, and with lines marked by their own fences or guarded by their own armed men, from which the public was excluded; and secured the election of their own employees as election officials, made the registration list from their own pay rolls, and kept them in their private places of business, and prohibited all public investigation as to the qualifications of the persons registered as electors within such precincts, the conduct of the election therein was such as to invalidate the entire poll. It is the essence of free elections that the right of suffrage be untrammelled and unfettered, and that the ballot represent and express the electors' own intelligent judgment and conscience. And there could be no free election within the precincts and under the conditions described.

Elections—Nomination by Fee. Patton vs. Withycombe. (Oregon. July 14, 1916. 159 P. 78.) A provision that in addition to the method of nomination by petition a person may file a declaration of candidacy and by the payment of a fee become a candidate for office, is not unconstitutional. Such an act does not in any way add to the qualifications of an elector desiring to become a candidate. No person is obliged to pay a fee, for the method requiring a fee is optional. The elector may create the right to become a candidate, either by a mere declaration and the payment of a fee, or by a petition without a fee, and a statute requiring the payment of a reasonable fee places no obstacle or impeachment in the way of a person whether he be rich or poor, so long as another method like the one here requiring no fee is open to him.

Explosives—Carriage of—International Law. Horn vs. Mitchell. (United States. April 27, 1916. 232 Fed. 819.) It is no defense to a charge of carrying explosives in a passenger vehicle operated by a common carrier in interstate commerce, that the accused was an officer in the army of a foreign country engaged in war, and that the explosive was so carried for the purpose of being used in an alleged act of war in the enemy's territory. The mere fact that the accused held a commission in the army of his country raises no presumption that he was acting under the authority of his government, so as to raise any question of international law.

Foods—Sale of Eggs. Ex parte Foley. (California. June 21, 1916. 158 P. 1034.) An act declaring that any dealer selling eggs imported from without the United States shall stamp each egg "Imported" and shall display at his place of business a sign "Imported eggs sold here," but which does not require the dealer to disclose the age of his imported eggs, is not, in view of the fact that in portions of the State eggs can be imported from foreign countries in a shorter time than they can be brought from other portions of the State and the United States, a valid exercise of the police power, and is void as interfering with foreign commerce, it being obvious that the purpose of the statute was not to protect the public health against unwholesome eggs, but merely to prejudice dealers against imported eggs in favor of the local product.

Foreign Corporations—Right of State to Exclude. Citizens' Ins. Co. vs. Hebert. (Louisiana. June 5, 1916. 71 S. 955.) A State has the right to exclude a foreign insurance company that has established a business in the State. The permission previously given such a com-

pany to do business in the State is not a vested right, nor is such permission a contract.

Highway Districts. Rinder vs. City of Madison. (Wisconsin. June 13, 1916. 158 N. W. 302.) The making of highway districts coextensive with counties does not unconstitutionally deny to cities the equal protection of the laws or lack uniformity, although taxing cities for improvements not directly benefiting them. If a rule for taxation should be adopted which limits the right of taxation for public improvements to such property only as it can be shown is directly benefited by such improvements, it would result in endless confusion and litigation, and render void many acts for the government of towns and counties. It is for the legislature to fix the limits of taxing districts and not for the courts.

Housing. Byrne vs. Maryland Realty Co. (Maryland. June 23, 1916. 98 A. 547.) A housing law for the city of Baltimore containing a provision that no dwelling house shall be erected within a defined section of that city, unless such dwelling house be constructed as a separate and unattached building, and, if of frame construction, to be at least twenty feet apart, and, if of stone or brick construction, at least ten feet apart, is unconstitutional. The owner of a lot within that section of the city cannot be deprived of his right to improve it in violation of the provisions of this act, where in the violation there is nothing inherently menacing the public health or safety, and since property rights cannot be invaded for purely aesthetic purposes under the guise of the police power.

Housing—Erection of Store in Residential District. State ex rel. Lachtman vs. Houghton. (Minnesota. July 28, 1916. 158 N. W. 1017.) A municipal ordinance prohibiting the erection of a store building upon land within a residential district cannot be sustained as a legitimate exercise of the police power. The use which an owner may make of his property is subject to any reasonable restrictions and regulations, imposed by the legislative power, which tend to promote the public welfare or to secure to others the rightful use and enjoyment of their own property; but only such use of property as may produce injurious consequences, or infringe the lawful rights of others, can be prohibited without violating constitutional provisions that the owner shall not be deprived of his property without due process of law.

Indians—Jurisdiction of Federal and State Governments. United States ex rel. Lynn vs. Hamilton. (United States. November 4, 1915. 233 Fed. 685.) While maintaining their tribal organizations and residing on reservations set apart for them by, or with the consent of, the general government, Indian tribes have always been regarded as wards of the nation, and not subject to state laws even when their reservations are located within the borders of a State. The power of congress to govern Indian tribes by legislation, and thereby abrogate or supersede Indian treaties has been upheld by the United States supreme court. The principle that a State may act in the absence of affirmative legislation on the part of congress is not applicable to the government of tribal Indians. So if Indian tribes are wards of the federal government and owe no allegiance to any State, and if the power over the Indian tribes rests with the federal government because it exists nowhere else, and if from necessity there can be no divided authority, then the jurisdiction of Congress must be exclusive, and the state laws cannot extend to tribal Indians. Consequently the conservation laws of the State of New York do not extend over the Indians residing in tribal relations upon reservations within the borders of that State, and an Indian so living in tribal conditions is not liable for a violation of that law in fishing within the bounds of his reservation with a net without the required license.

Marriage—Exception of Persons of Particular Religious Faith. Fensterwald vs. Burk. (Maryland. June 23, 1916. 98 A. 358.) An exception in a statutory prohibition against marriage between uncle and niece in favor of persons of the Jewish faith does not contravene the constitutional provision providing that one's religious opinions shall not enlarge his civil capacity. Where such a marriage between uncle and niece is valid under the laws of Rhode Island, the State where the marriage was performed, it is valid in Maryland, not being incestuous "according to the generally accepted opinion of Christendom."

Milk—Regulation of Sale. State vs. Stokes. (Connecticut. July 27, 1916. 98 A. 294.) A regulation of the board of commissioners of public health of a city prohibiting the sale of milk in stores unless contained in sealed bottles, does not conflict with a state act fixing a milk standard, and penalizing the placing of certain substances in milk containers and defining impure milk. Nor is such a regulation an

invalid classification where it applies to the sale of milk in stores, bakeries and butcher shops, but does not apply to dairymen and farmers.

Monopolies. United States vs. United Shoe Machinery Co. (United States. June 6, 1916. 234 Fed. 127.) The Clayton anti-trust act, making it unlawful for any person engaged in commerce, in the course of such commerce, to lease or sell goods, machinery, etc., on any condition that the lessee or purchaser shall not use or deal in goods or machinery of a competitor of the lessor or seller, where the effect may be substantially to lessen competition or tend to create a monopoly, as applied to leases made in the conduct of interstate business, is within the constitutional power of congress.

Monopolies—Regulation of Sale of Hog Cholera Serum. Hall vs. State. (Nebraska. June 3, 1916. 158 N. W. 362.) A limitation of the sale of hog cholera serum to persons holding United States government veterinary licenses and a permit from the live stock sanitary board, is an attempted restriction on the power of the citizen to buy and sell hog cholera serum and is unconstitutional for the reason that any person has the right to adopt and follow any lawful industrial pursuit which is not injurious to the community. Such an act gives a monopoly to the serum-manufacturing plant, because it is the plant that is licensed under the federal act. A further provision that no one shall give or accept a rebate or commission on serum sold or offered for sale, is an additional bar preventing the farmer from purchasing serum with which to treat his own hogs, and preventing the veterinary surgeon from purchasing serum with which to treat hogs belonging to his employers.

'Mothers' and Old Age Pensions—Constitutionality of Act. State Board of Control vs. Buckstegge. (Arizona. July 1, 1916. 158 P. 837.) The title of an act entitled "An act providing for an old age and mothers' pension and making appropriation therefor," does not express the subject of the act which provides not only for the establishment of old age and mothers' pensions, but also covers the abolition of the statutory system of county hospitals and poor farms, leaving the different counties without any means or provisions for the care of their indigent sick and poor, not entitled to pensions. Such an act is also invalid for the reason that it requires the support by pension of cer-

tain mothers with dependent children regardless of their financial condition.

Parole-Consent of Party. Ex parte Taggert. (Oklahoma. June 24, 1916. 158 P. 288.) Before the court can make the conditions of a parole binding upon a party convicted, that party must consent to the terms and conditions thereof. He is a party at interest and must be consulted, he alone has the right to accept the parole with the conditions imposed, or to reject it as he sees fit. And to bind him by the terms of the parole his consent must affirmatively appear.

Statutes—Construction. Perrault vs. Robinson. (Idaho. June 29, 1916. 158 P. 1074.) Statutes enacted at the same session of the legislature should receive a construction, if possible, which will give effect to each. They are within the reason of the rule governing the construction of statutes *in pari materia*. They are to be construed together, and should be so construed if possible, as to harmonize and give force and effect to each. If, however, they are necessarily inconsistent, the statute which deals with the common subject matter in a more minute and particular way will prevail over that of a more general nature.

Statutes—Construction of Revisions. Wipperman Mercantile Co. vs. Jacobson. (Minnesota. June 23, 1916. 158 N. W. 606.) In construing the revision of the laws of a State reference may be had to the report of the commission which drafted it, as the legislature undoubtedly gave weight to such report in enacting it. Reference may also be had to the history of the law and the purpose sought to be accomplished thereby. The presumption is that no change in the existing law was intended by the revision; and to give it the effect of changing the former law, the intention to make such change must clearly appear from the language of the statute when taken in connection with the history of the act and the purpose sought to be accomplished by it.

Statutes—Direct Legislation—Preamble. State ex rel. Berry vs. Superior Court. (Washington. July 5, 1916. 159 P. 92.) The preamble to a statute is an introductory clause which states the motive, design, reason or intent thereof. A preamble is not an essential part of a statute, has no legislative force, and is of importance only as a guide to an understanding of the statute with reference to the legisla-

tive intent in case of doubt or ambiguity. Under a constitutional provision for direct legislation there is no constitutional right given to propose a preamble to a proposed initiated law, and the courts will enjoin the publication at the expense of the State of a proposed preamble containing purely argumentative matter in support of an initiated act. While neither the judicial nor the executive branches of the government can interfere to prevent a delegated member of a legislative body from introducing a bill no matter how novel or foolish, the initiator of a bill, under the system of direct legislation, is not a legislator with whose acts in proposing the bill the courts cannot interfere. The initiator of direct legislation must proceed in accordance with the positive law prescribing the method of such legislation, and the courts will interfere by injunction in proper cases to prevent submission in disregard of such laws.

Statutes—Right of Courts to Determine Constitutionality. Terrell vs. Middleton. (Texas. June 14, 1916. 187 S. W. 367.) Whatever doubts may have existed at one time as to the authority of courts to decide upon the constitutionality of statutes, that matter has been definitely settled in favor of the affirmative, and while it may be a subject of regret that the court of last resort has seemed desirous at times of usurping the full powers of government, and laying itself open to the charge of shaping the policies and principles of our government, the fact has been settled beyond recall that courts, federal and state, have the authority ultimately to destroy or enforce laws passed by the legislative branch of the government.

Taxation—Railroad Terminals—Collection for Localities. State ex rel. City of Superior vs. Donald. (Wisconsin. June 13, 1916. 158 N. W. 317.) An act provided that the state tax commission make a valuation of the docks, piers, wharves and grain elevators used in transferring freight or passengers between railroad cars and vessels, separate from the valuation of the property of a railroad company as a whole, and that the taxes derived from such separately valued property be distributed to the towns, villages, and cities in which such property is located. An objection that the act appropriates money of the State for local purposes cannot be sustained since the funds are not state funds but funds belonging to the locality which have been collected by the State as a matter of convenience. Nor does the statute violate the rule that taxation be uniform, as the law does not

change in the least the taxpayer's burden, since he pays the same amount whether his whole tax remains in the state treasury or whether part of it goes to the treasury of a locality. Nor does the statute accomplish a discrimination between the taxing units of the State, since the marine terminal imposes upon the locality in which it is located responsibilities, duties and financial obligations not shared by municipalities possessing only ordinary railroad property.

Trials—Right to Public Trial. Roberts vs. State. (Nebraska. July 1, 1916. 158 N. W. 930.) The law requires that trials shall be public, but this requirement is satisfied by admitting those who can conveniently be accommodated in the court room, where the law requires such trial to be held, without interrupting the calm and orderly course of justice. It is not proper to adjourn a criminal trial for a capital offense from the regular court room to the stage of a public theater, without sufficient cause for so doing.

Workmen's Compensation Act—Constitutionality. Greene vs. Caldwell. (Kentucky. June 6, 1916. 186 S. W. 648.) A workmen's compensation act is not unconstitutional as depriving of property without due process of law because taking from a non-accepting employer certain defenses, since the employer has no vested rights in such defenses, and the legislature could take them all away without giving any election at all. Nor is it invalid as establishing a court; for the workmen's compensation board, established by it, is not a court but a board of arbitrators from whose decision an appeal lies to a court. Nor is it unconstitutional because not allowing a jury trial, since the parties accepting agree to trial without jury.

BOOK REVIEWS

The Postal Power of Congress, a Study in Constitutional Expansion. By LINDSAY ROGERS, Ph.D., LL.D., adjunct professor of political science in the University of Virginia. (Baltimore: Johns Hopkins University Studies in Historical and Political Science, Series xxxiv, No. 2. 1916.)

Like the other powers of congress, the postal power has to be studied, in its historical aspect at least, in three relations: first, that determined by the words in which it is granted; second, in relation to the supposed reserved rights of the States; third, in relation to the fundamental rights of individuals, the rights which in this instance are safeguarded by the first and fifth amendments.

One of the best illustrations that we have of the nonsense of which the states-rights metaphysic was capable is furnished by the fact that there came a time when the spokesmen of this school set up the contention that the power to "establish" postroads did not include the power to *construct* them, but only the power "to *select* from those already made those on which there shall be a post," an argument which, as Mr. Rogers suggests, if logically adhered to, would have compelled the national government to select its inferior courts from tribunals already in existence. A more moderate theory accorded the word "establish" its normal meaning, but held that before the national government could construct a road within a State, it must obtain the consent thereof, an idea which seems to have been referred to the "necessary and proper" clause, since, it was argued, "however *necessary* such improvements might be, it might be questioned how far an interference with the State jurisdiction over its soil, against its will, might be proper!" Yet, notwithstanding the wide vogue of such views, particularly after the triumph of the backwoods democracy under Jackson, the proper view of national power in this field was stated as early as 1838 by the supreme tribunal of a southern State. In *Dickey vs. Maysville, etc. Co.* (7 Dana 113), the Kentucky court of appeals defined the word establish as signifying "to found, prepare, make, institute, confirm;" and pronounced the national power over the post to be "exclusive," "plenary," and "supreme," so that "no State can constitutionally do,

or authorize to be done, any act which may frustrate, counteract, or impair the proper and effectual exercise of it by national authority."

The personal rights regarded as claimable against the postal power were, before the Civil War, confined to those safeguarded by the first amendment, but these were construed very broadly indeed. Then when the question arose in 1836 of excluding incendiary matter from the mails, Webster, Clay, and Calhoun all three contended vehemently that any direct effort by the national government to this end would constitute an "abridgement of freedom of speech and the press," though Calhoun thought congress might adopt State legislation dealing with the matter. It remained for Buchanan of Pennsylvania to state what would today be regarded as the more nearly correct view: "From the prohibition to make any law 'abridging the freedom of speech or of the press,' it could never be inferred that we must provide by law for the circulation through the post-office of everything which the press might publish."

What, then, is the limit to congress' power nowadays in excluding published matter from the mails? It is indicative of the general trend of constitutional construction throughout the past generation that Mr. Rogers discusses this question primarily in relation to the fifth amendment rather than the first, and with the parallel of congress' power over commerce in mind. The conclusion he arrives at, he phrases thus: "Any legislation excluding from the mails must apply to the *things* mailed, not to the *persons* using the mails. This is a distinction which is evident in the decisions upholding the interstate commerce legislation, and which underlies the argument that congress may exclude commodities manufactured in whole or in part by children. The law would operate directly on these commodities . . . because of the objectional conditions of employment. And by a parity of reasoning congress could exclude from the mails matter relating to gambling transactions which might be forbidden under the police power of the States . . . But it is an entirely different proposition absolutely to deny the use of the mails because certain persons have refused to comply with conditions, beyond the power of congress directly to impose, which it thinks may result in regulating objectionable practices, although these may be entirely disassociated from the bulk of the matter which has been excluded," (p. 172).

If the distinction thus offered is a really feasible one, it would seem to condemn the recently enacted child labor law, which excludes from interstate commerce, not the products of child labor as such, but the

products of *establishments* employing child labor. Indeed, the alacrity shown by the sponsors of this legislation may have been due to the belief that it would ultimately succumb to the constitutional test. But if this was the case, these gentlemen may find themselves hoist by their own petard. At any rate, I personally believe the recent legislation to be quite defensible constitutionally, however it may fare by Mr. Rogers' test. For granting that congress may exclude the products of child labor from interstate commerce, it may certainly adopt reasonable measures to make its prohibition effective and enforceable; and if a State may, by way of making its game laws effective, forbid its inhabitants from having in their possession game which was lawfully imported from abroad (*Silz vs. Hersterberg*, 211 U. S.), I see no reason why the product of an establishment employing child labor may not be excluded from commerce among the States. On the other hand, it is apparent, I think, that an act of congress forbidding divorced persons the use of the mails or of the channels of interstate commerce would be void; and the test by which it would be void is this: the use of the facility thus inhibited has nothing to do with the consummation of the evil which is sought to be combatted. But wherever a facility subject to national control is being put to a bad use, it may be withdrawn; and in judging of what is "bad," congress must be allowed the same range of judgment as the State enjoys in the exercise of its police power.

Professor Rogers has produced an interesting, well written and thoroughly competent piece of work, which is well up to the high standard set by the series of studies in which it appears.

EDWARD S. CORWIN.

History and Procedure of the House of Representatives. By DEALVA STANWOOD ALEXANDER. (Boston and New York: Houghton Mifflin Company. 1916. Pp. xv, 435).

Professor Redlich in his *Procedure of the House of Commons* demonstrated the importance of legislative procedure for the student of politics who would know the actual operations of governmental machinery. He did this by showing how the rules of procedure of the house of commons reflected the economic, social, and political conditions of England. The book under review, written by one who was for fourteen years a member of congress, does for the house of representatives what Professor Redlich did for the commons, although the two treatises

will hardly bear comparison when one considers the scholarly grasp and keen analysis of English political conditions Professor Redlich exhibits in his monumental work. Nevertheless, Mr Alexander presents for the first time a compact and authoritative history of the house of representatives and a general survey of congressional procedure. The author discusses the following topics: apportionment and qualification of members, organization of the house, the speaker, rules and committees on rules, committees and their work, debates and debaters, contested election cases, the President and the house. The author's remarks on these subjects are evidently the result of considerable and discriminating investigation of government documents relieved by a wealth of personal reminiscence and anecdote.

In describing the effect of the political conditions of the United States on the rules of procedure of the house of representatives, Mr. Alexander shows how, before 1861, it was held that a quorum consisted of a majority of all possible members, that the rebellion had caused a large number of constituencies to refuse to elect, and that the house then considered a quorum to consist of a majority of those chosen then alive (p. 56). He explains how obstruction received a decisive check by the operation of the previous question during our strained relations with England and France during the Napoleonic wars. John W. Eppes, chairman of the committee on foreign affairs, reported a bill to relieve the country from the embarrassment consequent upon the non-intercourse edict against England and Napoleon's Berlin decrees. Randolph, opposing the bill, adopted obstructive methods by means of continuous debate. Since only seven days of the session remained it became imperative to stop discussion and to pass the bill which had received the President's support. The previous question was demanded, it was ordered, and the house, reversing the speaker's ruling, voted that the previous question ended debate. These incidents, taken at random, demonstrate that Mr. Alexander is appreciative of external influences on the procedure of the house of representatives.

Of most importance and interest, probably, are the chapters dealing with the speaker, the rules and committees on rules, the order of business, and the President and the house. Mr. Alexander's comparison of the speaker of the house of commons with the speaker of the house of representatives deserves notice. The speaker of the house of commons "declares and interprets the law in a strictly judicial spirit, and his rulings are final. He renounces party, and merges the

lesser office of member into the greater one of speaker" (p. 43). On the other hand, the speaker of our national house, until 1910, "combined imperfectly the duties of a British speaker . . . and the legislative functions of a British prime minister, who represents a majority of the congress and endeavors to control legislation by all the adventitious aids known to party machinery" (p. 44). Of course, in 1910, the American speaker lost much of his power because the appointment of committees was taken from him and a special calendar for unanimous consent was established.

In the chapter on rules and committees on rules, Mr. Alexander discusses at length parliamentary obstruction. The purpose of this device "is to defeat a measure, or to postpone it until certain specified demands are complied with." In this chapter also he discusses the expedients used to overcome dilatory tactics. The chapter on the order of business is concerned chiefly with the efforts of representatives to provide rules at once adequate and fair to deal with the country's increasing business. The aim always has been to prevent the house from becoming merely a voting machine with a minimum amount of debate by members. The ideal has, however, been hard to attain, for in the Sixty-second Congress, for example, 26,000 bills were introduced (f. n. p. 217). The inevitable has happened. The house more and more tends simply to register opinions, because discussion on all of these bills would have left the business to be attended to far in arrears.

The final chapter—the President and the house—discusses the procedure employed when electing the chief executive, when the President presents a message, at the time of resolutions of inquiry, and in case of a president's veto or threatened veto. Mr. Alexander considers President Wilson's practice of appearing before congress to read his messages as likely to confine the applause to one side of the chamber, "giving the ceremony something of a partisan character, which occasions subtle embarrassment" (p. 356).

Several defects in Mr. Alexander's work may now be noted. His failure to discuss the influence of English precedent on the rules of the house of representatives is an important, if not serious omission. Professor Redlich observes that "American parliamentary government is obviously a genuine shoot from the old English stem, even after making fullest allowance for the independent characteristic development of the last hundred years in the United States." It may be regretted that Mr. Alexander did not realize this fact. Although the

author devotes many pages to obstruction, it is curious that he failed to mention "filibustering" the American form of this peculiar procedural device. It differs from the ordinary dilatory tactics in that it is more systematic, and it usually takes the form of long speeches. Further, the correctness of Mr. Alexander's definition of obstruction, already referred to, may be questioned, for he fails to distinguish between wilful and unconscious obstruction. In the first instance, it is intentional delay of legislation by parliamentary procedure. In the second instance, it is unintentional delay of legislation resulting from political conditions outside the house. These distinctions are of importance for the student of legislative procedure. Finally, certain mechanical defects in the book are noticeable. The index is inadequate. The appendix, which contains lists of the presidents and vice-presidents, speakers, chairmen of committees, and political divisions of the house of representatives from 1789 to 1915, would be of more interest and value if explanatory notes accompanied them.

Nevertheless, the book is a valuable contribution to a highly important but too little known subject. The style is interesting, although rhetorical at times, and not always clear and definite. The work well repays the careful study alike of students of general political science and of legislative procedure.

GEDDES W. RUTHERFORD.

Our Chief Magistrate and His Powers. By WILLIAM HOWARD TAFT. (New York: Columbia University Press. 1916. Pp. 165.)

This book contains six chapters bearing the following titles: "Distribution of Governmental Powers;" "The Veto Power;" "The Minor Powers of the President;" "The Power of Appointment;" "The Duty of the President to take care that the laws are executed;" "The Powers and Duties of the President as Commander in Chief;" "The Foreign Power;" "The Pardoning Power;" "The Limitations on the President's Power." These chapters were originally prepared in the form of six lectures delivered by Ex-President Taft at Columbia University in the year 1915-1916. The author also delivered three lectures on the same subject at the University of Virginia the preceding year, which have been published by Charles Scribner's Sons under the title: *The Presidency: Its Powers, Duties, Responsibilities and Limitations.* The volume before us is a more extended treatment of the same general subject.

The distinguished author has given us an interesting account of the presidency from the point of view of one who has wielded its great powers, and felt the weight of its grave duties and responsibilities. He has maintained a refreshing good humor throughout the book, although some of the incidents referred to must have tried even his proverbial good nature in their relation. One would expect Mr. Taft to take advantage of the opportunity offered by a course of popular lectures to emphasize the really important things he has stood for while in office. He has done this with characteristic frankness and entire freedom from the taint of objectionable partisanship. He has made an admirable presentation of the defects in the methods of managing our national finances and the need of a correct budgetary system under executive control and responsibility. His exposure of the patronage game and how it is played, notwithstanding the civil service laws and rules, is courageous and in fine spirit.

A few passages will illustrate the position taken by Mr. Taft on a number of questions discussed, and the style of treatment adopted in this book. On page 12 he shows his characteristic distrust of the modern reformer in summing up the advantages of the "congressional" system as opposed to the "cabinet" system in the following words:

"The value of the legislation seems not to be in the good of its operation, but in its vote-getting quality, and its use as molasses for the catching of political flies. Therefore, a system in which we may have an enforced rest from legislation for two years is not bad. It affords an opportunity for proper digestion of recent legislation and for the detection of its defects. . . . Real progress in government must be by slow stages. Radical and revolutionary changes, arbitrarily put into operation, are not likely to be permanent or to accomplish the good that is prophesied of them. My observation of new reform legislation of a meritorious character is that congress and its members must be educated up to its value by those who have studied it and become convinced of its wisdom. . . . The world is not going to be saved by legislation and is really benefitted by an occasional two years of respite from the panacea and magic that many modern schools of politics seem to think are to be found in the words 'Be it enacted.'"

On page 34 the author calls attention to a practice of the President not commonly understood. He says the executive office of the President is not a recording office. "The vast amount of correspondence that goes through it, signed either by the President or his secretaries,

does not become the property or a record of the government unless it goes on to the official files of the department to which it may be addressed. The retiring President takes with him all the correspondence, original and copies, which he carried on during his administration. Thus there is lost to public record some of the most interesting documents of governmental origin bearing on the history of an administration. It is a little like what Mr. Charles Francis Adams told me of the diplomatic records of the British foreign office. It has long been the custom for the important ambassadors of Great Britain to carry on a personal correspondence with the secretary of state for foreign affairs, which is not put upon the files of the department, but which gives a much more accurate and detailed account of the diplomatic relations of Great Britain than the official files."

On page 59, speaking of the patronage system, he says: "Machine politics and the spoils system are as much an enemy of a proper and efficient government system of civil service as the boll weevil is of the cotton crop, or the various forms of insects and blight are of the farmer and the horticulturist in their pursuits. The strength of these pernicious influences has not been entirely destroyed by the present civil service law. . . . The law will not enforce itself. It has accomplished one purpose in enabling those who voted for it in the legislature to claim credit for it on the stump; but such a law cannot be drawn which will be practical and at the same time will not permit evasion of its purpose by a partisan in the executive chair who devotes his time to it. We often, therefore, find the law more honored in the breach than in the observance. . . . It is clearly understood by the senators and congressmen as to how this patronage is to be divided between them in each State, and the President attempting to break up the custom has heretofore found himself unable to do so."

He also vigorously condemns the practice of permitting the judges of the federal courts to appoint their clerks. On page 68 he says: "Judges are men of high character, great ability and wide learning generally, but when they are given executive or quasi-political functions, that is, when they exercise patronage, they have proven to be quite like other men. Clerks appointed in the federal district courts become part of the family of the judge. Their appointments are practically for life. They feel secure, they are close to the judge. Their associations are intimate. They naturally seek to increase the earnings of their offices, especially when their salaries are more or less dependent on the amount of their official earnings, and they are prone

to overcharges. The favor they enjoy with the judge, as part of his family, has, I am sorry to say, permitted such abuses. The reluctance that some judges have to call their clerks to strict account in the management of their offices is too well known to the head of the department of justice and to his inspectors whose duty it is to examine their accounts. When in office, I recommended that the President have the power of removal of such clerks for cause, upon the report of the attorney general, but no such action was taken, although there were a number of cases presented justifying such a change in the law. With nearly one hundred clerks of court and with a large number of deputies spread all over the United States, the influence that can be used with members of congress in a matter like this, not acutely political, only those who have had occasion to meet it can fully understand."

WM. A. SCHAPER.

Woodrow Wilson. The Man and His Work. By HENRY JONES FORD. (New York: D. Appleton and Company. 1916. Pp. 332.)

Prof. Henry Jones Ford was a colleague and close friend of Woodrow Wilson in the department of history, politics, and economics at Princeton University. He was appointed banking commissioner of New Jersey when Mr. Wilson was governor of that State, and went to the Philippines on a secret mission for him after he became President. Thus the subject is fortunate in having for his biographer a sympathetic friend rather than a political opponent. The volume, however, is not a campaign book. It is prepared in a most attractive style and will appeal to any reader with sufficient education to appreciate the political setting.

A biography may be a mere chronology of events, but this work contains only enough detail of Mr. Wilson's movements and outward acts to serve as a background for his thoughts and the principles upon which he acts. The author uses copious quotations from the writings of Mr. Wilson to express the opinions held by him at the different periods of his life. For instance, Mr. Wilson has always been deeply interested in our so-called budget system. When he was a senior at Princeton (1879) he published an article in the *International Review* on "Cabinet Government in the United States," which showed a remarkably clear insight into the actual workings of our financial methods. His thesis for the Ph.D. degree at Johns Hopkins (1886), entitled "Congressional Government," elaborated his earlier ideas set

Third Party Movements Since the Civil War, with Special Reference to Iowa: A Study in Social Politics. By FRED E. HAYNES. (Iowa City: The State Historical Society of Iowa. 1916. Pp. 564.)

This somewhat detailed study of minor political parties is confined to those third parties which "grew out of the economic and social conditions arising from the settlement of the West," and, accordingly, gives no place to the Prohibition and Socialist parties. The five parts of the book bear the following titles: "The Liberal Republican Movement;" "The Farmers' Movement;" "The Greenback Movement;" "The Populist Movement;" "The Progressive Movement;" and each part, in addition to a satisfactory general treatment of the origin, platform principles, personnel, and influence of the party, has from one to five chapters devoted to conditions in Iowa. Those who are interested in political theory, especially in the influence of economic ideas in politics, will find much that is instructive and suggestive in the account of the economic setting of third parties, and of the relation to these movements of the economic ideas of Henry George, Edward Bellamy, "Coin" Harvey, Henry D. Lloyd, Richard T. Ely, and William G. Sumner.

The conclusion, however, that "these long neglected and often apparently extreme groups have slowly but surely made American politics social" would seem to require more qualification or explanation than it receives. In view of the fact that other platforms are summarized and freely quoted, it is surprising to find omitted all but a reference to the important Populist platform of 1892; and the interesting discussion of the early "progressivism" of men like Hazen S. Pingree, "Golden Rule" Jones, Tom L. Johnson, William S. U'Ren, Joseph W. Folk, and Albert B. Cummins seems scarcely to warrant the statement that "Michigan, Ohio, Oregon, Missouri, and Iowa were the most conspicuous of the States where the foundations were laid locally for the progressive movement."

In general, however, the treatment is careful, comprehensive, and well proportioned, and is made vivid by full accounts of the personal element, by fresh points of view, and by suggestive interpretations.

A. C. MILLSPAUGH.

Criminality and Economic Conditions. By WILLIAM ADRIAN BONGER. Translated by Henry P. Horton. With an editorial preface by Edward Lindsey, and with an introduction by Frank H. Norcross. In the Modern Criminal Science Series, No 8. (Boston: Little, Brown, and Company, 1916. Pp. xxxi, 706.)

The committee of the American Institute of Criminal Law and Criminology has rendered a great service to students of present-day problems—legal, economic, and sociological—by selecting for the Criminal Science Series this work of the Dutch publicist, Dr. Bonger. The excellent translation is based on the French text of the Amsterdam edition of 1905. In the etiology of crime it is safe to say that economic conditions hold the first place; and in the rapidly expanding literature relating to the economic factors of criminality Dr. Bonger's elaborate investigation is without a peer. Thoroughness of research, clearness of analysis, and keenness of interpretation reveal the hand of the trained expert. A great mass of statistical material has been explored. The marginal notes and the "revised" bibliography of 27 pages disclose a wide and close acquaintance with the European literature of the subject. However, the author does not show adequate knowledge of American writings and statistical collections. On ancillary questions, such as prostitution and the family institutions, some of the best work is unnoticed; while on the main subject, to cite two omissions, no use apparently is made of the reports of the Massachusetts Bureau of Labor Statistics, nor of Koren's important *Economic Aspects of the Liquor Problem*, an investigation made for the Committee of Fifty (1899).

The work comprises two parts, the first offering a "critical examination of the literature dealing with the relation between criminality and economic conditions." So far as practicable in this division the various authors considered are allowed to state their views in their own words. The second part, filling about two-thirds of the volume, contains Dr. Bonger's own investigation.

The first part in eight chapters provides an historic background for the scientific discussion of the present-day phenomena of criminality. It constitutes a unique source-book for the theories and the literature relating to the causes of crime. The opening chapter contains extracts from the writings of thirteen "Precursors—authors who treated the subject before the birth of modern criminal science," beginning dramati-

cally with the prophetic *Utopia* of Thomas Moore, who has the cardinal told that instead of "appointing great and horrible punishments for thieves," it would be wiser to provide "some means whereby they might get their living." According to these writers the social environment is the fruitful source of crime. When our irrational social system, the basic cause of evil, "shall be removed," says Robert Owen, "then will the evil cease, and not before." In the ensuing chapters of this part due notice is given to: the "Statisticians," seventeen in number, not belonging to any special school of criminologists; the "Italian School"—headed by Lombroso and Garofolo—which "insists especially upon the individual factors in crime, and ascribes only a secondary place to economic factors;" the "French School," which "considers the rôle played by environment as very important," and includes such writers as Tarde, Corre, and especially Manouvrier, who has set forth the theory of environment "in the clearest manner;" the group of "Bio-Socialists," whose doctrine forms the synthesis of the Italian and French schools; the "Spiritualists," like Joly, Proal, and de Baets, who, though influenced more or less by modern criminal science, have the idea in common, that the "continually growing irreligion is a cause of the increase in criminality," and that the "irreligious are predisposed to crime;" and finally the so-called "Third School and the Socialists," to which belong writers like Turati, Bevel, Lux, and Colajanni who regard the influence of economic conditions as "decisive" in the causation of crime.

Aside from its careful analysis of the literature, Part I of this book is of special scientific interest. It attests the efficiency of the statistical method. Dr. Bonger's searching criticism, notably of Lombroso and some other members of the Italian school, reveals the perils due to the crude handling of statistical data; while his own luminous interpretation may stand as a model of scientific induction.

The second part of this work is a social-economic treatise of high value. The first of the two books into which it is divided explains the "present economic system and its consequences." The opening chapter shows the inevitableness of criminality under the existing system of production. Human labor, like other exchangeable things, "has become a commodity corresponding exactly to definition: first it has no use-value for the possessor if he has not the means of production, and, on the other hand, has such a value for the person possessing these means; second, the possessor of labor has the free disposition of it." The most important consequence of the new system of produc-

tion is the "introduction of the labor of women and children, since tending of machines generally does not require great muscular strength. The advantages which accrue to the capitalist from the employment of women and children are obvious. Since the price of the workman's labor is determined by the time necessary for the production of the necessities of life not only for himself, but also for his family, as soon as the whole family are compelled to sell their labor, the price of that labor will simply equal that of the labor of the workman alone."

In a convincing discussion the author shows how the present "social condition of the different classes is chiefly the result of capitalistic production." The capitalistic bourgeois' thirst for gold is not quenched when he has "arrived at a point where he can live a luxurious life and gratify all his caprices." He strives ever to amass more wealth. As a consequence, "in general he is little developed in other directions, uses all his time in attaining the end he wishes for, has a mind only superficially cultivated, and if he is interested in art he regards it simply as a pastime which he procures for money."

On the other hand, the impoverished class is not made of inferior clay because it has failed in the economic struggle. Dr. Bonger exposes the crass fallacy of "social Darwinism," and accepts the doctrine of "potential" talent or genius as expounded in the great work of Odin, though he seems not to be familiar with the brilliant chapters on this subject in Ward's *Applied Sociology*. The lower proletariat is "not composed, then, as has sometimes been claimed, of beings inferior by nature, of persons who are fit for nothing. In the great majority of cases social conditions and not their lack of aptitude are the exclusive and direct causes of their position."

The economic conditions which tend to produce criminality are accented in the relations of the sexes in marriage, the family, and in prostitution. Here the author is at his best. His elaborate discussion is based on ample statistical data. The monogamic family has sprung up in consequence of the rise of private property. It is not the last word in social development. Bad family-education and poverty are the chief causes of prostitution. With Bebel, Dr. Bonger holds that the present restricted marriage relation is responsible for much evil. Thus prostitution is "partly the inevitable complement of the existing legal monogamy, and partly the result of bad conditions under which many young girls grow up, the consequence of the physical and mental misery in which the women of the proletariat live, and the consequence also of the "inferior position of women in our present society." Bad

housing conditions breed prostitution. In general prostitutes are made and not born. At birth the daughters of the people are not of earth inferior to that of the higher social classes; yet at least 95 per cent of prostitutes "have sprung from the lowest strata of society." The existing social inequality is "alone responsible for their unequal distribution." A woman may even sell herself for conscience's sake: to fulfil her duty as daughter or mother; to save from want her aged or infirm parent.

The last 300 pages of this able treatise, constituting the second book of Part II, are given to a masterly discussion of "Criminality." The egoistic tendencies resulting from the present economic conditions are examined in detail. These tendencies are traced in the present economic system; in the proportion in which the different classes are guilty of crime; in marriage; the criminality of women; the family; prostitution; alcoholism; militarism; the penalty; and in imitation.

In the same spirit, with use of a similar wealth of statistical materials, the actual results of these tendencies are investigated in the concluding chapters, entitled respectively: economic crimes, sexual crimes, crimes from vengeance and other motives, political crimes, and pathological crimes.

No attempt can here be made to analyze these chapters. Dr. Bonger has exposed the fallacy of the individual origin of crime and proved society's responsibility for it. Lombroso's theory of the born criminal is shown to be untenable. "It is society that prepares the crime, says the true adage of Quetelet. For all those who have reached this conclusion, and are not insensible to the sufferings of humanity, this statement is sad, but contains a ground of hope. It is sad, because society punishes severely those who commit the crime which she has herself prepared. It contains a ground of hope, since it promises to humanity the possibility of some day delivering itself from one of its most terrible scourges."

The author believes that his "ideas about the etiology of crime will not be shared by a great many readers of the American edition." He is surely mistaken so far as the educated public is concerned. As to the rest, he has provided the needed lesson.

GEORGE ELLIOTT HOWARD.

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The Single Tax Movement in the United States. By ARTHUR NICHOLS YOUNG. (Princeton: Princeton University Press. 1916. Pp. x, 340.)

The Single Tax Movement in the United States has found an impartial chronicler in Dr. Arthur Nichols Young. After a brief view of the precursors of Henry George, and a description of the peculiar economic environment in California during his formative years, the narrative begins with an account of the activities which led to the writing of *Progress and Poverty*, and rapidly unfolds after the republication of that remarkable book in New York. The friendly reviews of the new work soon gave place to heated criticism as popular enthusiasm brought the agitation within the realm of practical politics. From his arrival in New York in 1880, until his dramatic death on the eve of the mayoralty election in 1897, Henry George lived at high tension: writing, traveling, lecturing, spending his whole power in defending and popularizing his disturbing doctrine. The last half of the volume is given up to a clear and detailed summary of the political activities of single taxers in the States where their efforts have been concentrated, and an appraisal of the general scope and significance of the movement. A bibliography and index complete a useful study.

Confining the investigation to the United States has led unavoidably to a somewhat arbitrary picture of what is essentially a world movement. A second volume would be needed to trace the influence of Henry George upon the economic development of the British Empire, the reception of his ideas in Europe, and present tendencies in some of the Spanish-American republics.

In reviewing the course of the single tax movement, the historian notes a tendency to shift the emphasis from abstract reasoning to concrete political issues, although it was admittedly the human appeal which gave vitality to *Progress and Poverty*, with its passionate assertion that "private property in land is a bold, bare, enormous wrong, like that of chattel slavery." To socialize the rent of land and abolish all taxes (save that on land values) involves so revolutionary a process that his followers have been prone to take Henry George's advice and seek the line of least resistance. Their efforts have been directed to obtaining separate assessments of land and improvements, to securing home rule in taxation, direct legislation, and even to advocacy of the income tax as a means of reaching a part of the unearned increment.

Thus it is maintained that, while single taxers have been an impor-

tant factor in tax reform, they "have not been able to convince many that private ownership of land is ethically on a different basis from other property, or that to expropriate owners of existing land values is more just than to expropriate owners of other property values." Their work still lies ahead. Unaided today by the popular appeal of such striking personalities as Father McGlynn, Tom L. Johnson or Joseph Fels, they must win a hostile public to a belief in the equal rights of all to the use of the earth, or see the single tax movement relegated to the scrap heap of discarded Utopias.

FRANK W. GARRISON.

The Socialism of To-Day. Edited by WILLIAM ENGLISH WALLING, J. G. PHELPS STOKES, and others. (New York: H. Holt and Company. 1916. Pp. xvi, 642.)

This volume is offered as "a source book of the present position and recent development of the socialist and labor parties in all countries, consisting mainly of original documents." It is edited by a committee of the Intercollegiate Socialist Society and is introduced by an historical sketch of the growth of socialism (chapter I), stressing chiefly the platforms of its international congresses. Then follow in sections II-V, twenty-four chapters tracing the recent progress of the socialist movement in the various nations of the earth, emphasizing in brief, sketchy chapters official resolutions, platforms and important discussions, and also presenting tabulations of the results of recent elections, showing comparative gains and losses. From the demands of the socialist platforms throughout the civilized world one may get in brief form a most excellent study of the various aspects of radicalism in widely differing types of civilization, so that these chapters are most helpful and suggestive.

Most readers, however, will be best pleased with Part II, which devotes twenty chapters to a brief presentation and discussion of the attitude of socialism towards social problems. A brief statement of the problem introduces each chapter, and then follow official declarations and opinions, with indications as to the probable socialist policy towards each of the problems discussed, such problems, for example, as the general strike, unemployment, immigration and woman suffrage. In these discussions naturally most attention is given to English-speaking countries and to France and Germany.

An Appendix discusses "Preparedness" from the standpoint of Amer-

ican socialist opinion. Socialism as affected by the present war is ignored in this volume, since a companion volume (*The Socialists and the War*) presents that aspect of socialistic development.

The book as a whole is well printed, carefully prepared, and is well nigh indispensable to those desirous of a "bird's eye view" of socialism in its present stage of transition.

J. Q. DEALEY.

The Problem of the Commonwealth. By L. CURTIS. (Toronto: The Macmillan Company. 1916. Pp. xii, 247.)

Not in a long time has a more stimulating and critically-constructive work on the British Empire appeared than the subject of this review. At the same time, while thought-provoking, it is marked by sanity and logical dispassionateness. To a considerable extent it is the fruit of the collective effort of groups of earnest thinkers in various portions of the British Empire to focus attention upon imperial problems with a view of introducing reforms where needed in the present organization of the empire. But while reflecting in part the views and opinions no less than the criticisms of the various "Round Table Groups," the volume is nevertheless the individual contribution of Mr. Lionel Curtis, who holds himself alone responsible for the opinions expressed. It is presented as a preliminary report to be followed shortly by a much larger one under the title of *The Commonwealth of Nations*. Although the views here expressed contain little that is novel, as indeed Mr. Curtis admits, they "have never been adopted as their creed by any recognized party, either in the Dominions or in the British Isles." And yet the issues raised transcend parties and party creeds and call as never before for a conscious and deliberate decision. The underlying issue is revealed in the contention "that dominion electorates must, in the not distant future, assume control of foreign affairs, yet cannot do so without deciding irrevocably whether they are to keep or to renounce their status as citizens of the British commonwealth." The problem was even more baldly stated by Mr. Andrew Fisher on his first arrival in London, as high commissioner of the Australian commonwealth. "If I had stayed in Scotland," declared Mr. Fisher, "I should have been able to heckle my member on questions of Imperial policy, and to vote for or against him on that ground. I went to Australia. I have been prime minister. But all the time I have had no say whatever about Imperial policy—no say whatever. Now that can't go on. There must be some change." In a like vein, Sir

Robert Borden, the Canadian prime minister, declared in December, 1912, that "it has been declared in the past, and even during recent years, that responsibility for foreign policy would not be shared by Great Britain with the dominions. In my humble opinion adherence to such a position would have but one and that a most disastrous result." Prior to the outbreak of the European War however such dissatisfaction was sporadic and largely limited to isolated groups of thinkers. But among the political problems raised by the war not the least momentous is this very one of the political reorganization of the British Empire. After the restoration of peace the empire system must be revised in accordance with the principles for which it stands. Naturally the dominions will expect thereafter to participate in the determination of the foreign policy in support of which they have undergone such heavy sacrifices.

In the present struggle, the scattered communities of the empire are radically altering their relations to each other. Before the outbreak of the present war the common defense of the empire had nowhere been recognized as a first charge on the public resources, except in the British Isles. And therefore it was quite natural that the responsibility for the issues of peace and war had nowhere within the empire been assumed, except by the people of the United Kingdom. Clearly, the first of these conditions can scarcely be revived with the return of peace, in any case it cannot be maintained. It will be evident that the liberties which have been preserved cannot be secured for the future, unless the burden involved is recognized as a first charge on the resources of *all* the free communities of the commonwealth, *in peace as well as in war*. But at the same time it will be recognized that the financial relations of the older and younger communities cannot be revised without also revising their political relations, owing to the generally accepted principle that "a democracy can never be responsible for anything until it is responsible for paying the cost of it."

While entirely in accord with the view that the burning problem of the present is to win the war, bending all energies to that end, Mr. Curtis commends to the thought of statesmen and thinkers in general the problem of the future of the empire. No more opportune time for the careful consideration of the issue can be conceived than after the restoration of peace when the peoples of Britain and the dominions alike will be thinking imperially. And with the advent of a victorious peace, which happily appears now to be assured, the opportunity is one of added promise. Now, indeed, is the accepted time, for the tide

in the affairs of the empire is flowing strongly and must be taken at the flood. We are reminded by Sir Charles Lucas that an occasion has arisen "such as may never present itself again."

Implicit in the very suggestion that the political organization of the empire is in need of revision lies the fact that weaknesses and dangers lurk in the present system. In the popular view there is lacking an appreciation of the fact that while self-government in the dominions is sufficient for the purpose of realizing nationhood, it is still incomplete. To be sure the dominions have been conceded every power of self-government which they have *finally insisted upon having*. Thus they manage their own domestic affairs, frame their tariffs, control their immigration, create forces by land and sea, and do anything they please, short of attempting to determine for themselves the ultimate issues of peace and war. That the legal standing of the self-governing dominions is anomalous is obvious. They have been spoken of as "partner nations" whose ministers stand on a footing of equality with those of Great Britain. By one British statesman they have been described "as sister states, equals of the United Kingdom in everything except population and wealth," and by another it has been asserted that "we each of us are, and we each of us intend to remain, master in our own household. This is, here at home and throughout the dominions, the life-blood of our polity." And yet the issues of peace and war, the moment they are raised, must be left to a government in which the dominion electorates have no voice. They "are habitually settled," we are reminded by Mr. Curtis, "by the government responsible to the people of the British Isles, and without reference to those responsible to the people of the dominions."

Thus in August, 1914, the dominions were unexpectedly involved in a war by events of which not only they but their governments knew nothing. In this crisis it was impossible for the dominions, like the United States, to declare their neutrality without, like the American republic, first declaring their independence. Happily they were swept by filial instinct into the defense of the imperilled Mother Country. And yet none but the fatuous optimist would conclude from the remarkable sacrifices enthusiastically and voluntarily accepted by the Dominions that their political status within the empire is satisfactory and that it can indefinitely continue. The overseas peoples of the empire have earned the right to a voice in the foreign policy of the empire as a whole in determining questions which involve peace and war. They wish to share the responsibility.

Notwithstanding the growing feeling that the situation calls for the convening of a conference, at the close of the war, on a larger and more representative scale than the imperial conference, a wide difference of opinion presents itself over the question as to what lines of empire organization should be followed by that body. Some would build the future of the empire on a system of alliances, rejecting all thought of organic unity. Some maintain with equal conviction that organic unity alone will avert eventual disruption and that if it is not carried through on the present high wave of imperial sentiment there can never be a united empire. There are others, looking forward to ultimate organic unity, who maintain that it can come only as the result of a gradual development. In the opinion of this group "any federation or union of English people must grow. Any cut-and-dried scheme would be fatal, contrary to English history, and contrary to English instincts."

In his advocacy of a commonwealth of Greater Britain, Mr. Curtis forcibly champions the plan of organic unity. Quite properly rejecting the suggestion of admitting Canadian and other dominion representatives into an imperial parliament, which should remain in control over the domestic affairs of the British Isles, he advocates the establishment of a genuinely imperial parliament. Under this plan the conduct of foreign affairs for the whole British commonwealth and the conduct of domestic affairs for the British Isles would no longer be entrusted to one and the same authority. "These two great departments of business," says Mr. Curtis, "the one affecting the whole commonwealth, the other a small part of it, are not merely distinguishable in theory, but can also be separated in practice, and no proposal will touch the fringe of the problem which does not assign each of them to cabinets and parliaments as distinct from each other as are those at Ottawa from those at Quebec." The United Kingdom accordingly would of necessity establish a national government of its own, the counterpart of the national governments of Canada, Australia, and the other dominions. He adds that "the imperial government must have no more to do with exclusively British affairs than it now has with the national affairs of the several dominions."

To this new body would be assigned the exclusive control of foreign policy and of all the administrative departments necessary to the carrying out of a foreign policy. The foreign office, the war office, the admiralty, the India office, and the crown colony branch of the colonial office, together with a ministry of imperial finance, would be

represented in the cabinet which would be the executive organ of this imperial parliament. The parliament would be elected "from all those dominions whose people have decided to assume control of foreign affairs without foregoing their status as British subjects." This new legislative body would retain all the powers now exercised through the enumerated offices together with the power of voting the funds which in its opinion would be necessary for the conduct of foreign affairs and defense. It could be established and its authority accepted by the dominions without the alteration of "a single word of their existing constitutions." By this change their inhabitants would obtain a control over foreign policy while at the same time assuming a new liability for their share of its cost.

For the United Kingdom, however, this would not be true. The proposed plan would involve a radical change in the manner in which its domestic affairs are regulated. The peoples of the British Isles would have to accept local parliaments. These and other proposed changes would have to be incorporated in a formal act of the existing imperial parliament, which, if passed, would practically become a written constitution for the commonwealth as a whole.

The commonwealth, thus proposed, would constitute a "super-national democracy"—a commonwealth not only of free individuals but of free nations. In thus presenting the issues inherent in the problem of evolving an organization which would be more than an alliance but less than an *imperium*, Mr. Curtis has rendered a notable service to political scientists the world over.

THEODORE H. BOGGS.

Nationality in Modern History. By J. HOLLAND ROSE. (New York: The Macmillan Company. 1916. Pp: xi, 202.)

The author of the *Development of European Nations* has done us a distinct service in bringing his wide and accurate knowledge of recent history to bear upon one of the most vital and distinctive features of modern European civilization. How nation is distinguished from state, and how racial, linguistic and religious bonds work both with and against the bond of government is a problem not easily grasped by the uninitiated, and yet its solution lies at the very basis of an understanding of the present European situation. Mr. Rose tells us that it is his aim to study "the varied manifestations of nationality among the chief European peoples" and the ten lectures which comprise the

volume constitute a remarkably complete review of modern history from that point of approach.

In the first lecture Mr. Rose treats of the rise of the national idea in Europe as opposed to the political unity of the old Roman world, and mentions as causes of this new idea the barbarian invasions whereby Europe was split up into tribal areas, as well as the discords arising from the struggles between pope and emperor. Civil strife and the oppression of the people by absolute governments did much to delay the development of the national idea, and it is only in comparatively recent times that its advance has proceeded by leaps and bounds. In France we find a new spirit in 1791, when the loss of a monarch only served to create a consciousness of unity among the people, which soon ran to excess and became the victim of Bonapartism. In Germany the seeds were sown by her philosophers and poets, and the harvest reaped when resistance to Napoleon called for a united nation. In Spain the natural aloofness and pride of the Spanish people became a national force when in conflict with the power of Napoleon. In Italy the growth of nationality is described by the author as "a struggle against the policy of division and subjugation imposed in 1815." As in Germany, so in Russia, the Napoleonic invasion marked a national awakening, which became panslavic in character when the liberation of the Balkan states from the yoke of Turkey became first a program and then an accomplished fact. In reference to the fears of many Europeans in regard to panslavism Mr. Rose designates the movement as "having been hitherto a political tower of Babel."

In the seventh lecture Mr. Rose traces the gradual but steady growth of the present German nationalism (the aggressive form of nationality) from the ideas of Frederick the Great as the guiding spirit of the Prussian state, through Kant's gospel of duty and Fichte's Spartan aims to the theories of Hegel, who glorified the state as an "absolute and all-pervading entity," and then on to the *Realpolitik* of Rochau and the inevitable result, namely, Treitschke's teachings, the present Emperor's *Weltpolitik*, and the decadence of nationality into militarism and chauvinism. This decline of nationality from a great constructive movement into a policy of aggression is discussed by the author with respect to the present European conflict, and in the closing lecture he discusses earlier movements for the attainment of the ideals of internationalism, and gives reasons for hoping that there may be a revival of these ideals.

On the whole Mr. Rose's volume is a very scholarly bird's-eye view

of modern European history with the emphasis on nationality, its various origins and developments. There is, moreover, quite a bit of political philosophy thrown in, and some interesting prophecies are made of two possible types of peace and their attendant results. To students of history the book will prove a helpful review of familiar facts and their bearing on that topic of special interest at present, nationality and war. To those less well acquainted with Europe's past, *Nationality in Modern History* presents an opportunity to acquire a knowledge of facts essential to an intelligent consideration of present conditions and future developments,—facts given in a most interesting style and, as the author expresses it, in “as objective and impartial a treatment as present conditions admit.”

MARY LEE HICKMAN.

The Law of Contraband of War. By H. REASON PYKE. (Oxford: The Clarendon Press. 1915. Pp. xl, 314.)

To those who from a sense of scholarly duty have attempted to thread their way through the British orders in council, the American protests, the British replies and further American protests, the present volume will come as a welcome light in the darkness. Mr. Pyke sets out to trace the origin and development of the fundamental principles of the law of contraband based upon the practice of the chief naval powers in different periods, and from the outset he disclaims any purpose of settling the moral questions involved in the alleged inconsistency of trade, by neutral citizens, in munitions of war with the principle of non-intervention followed by the neutral government. The laws of neutrality are as a whole not a consistent body of rules, being the result of a compromise between the conflicting interests of belligerents and neutrals; hence in place of abstract consistency the author suggests that new developments of the law be based upon deduction from the usages which have gradually grown up as a result of the special conditions of particular wars.

The historical treatment of the origin and development of the principles of the modern law of contraband presented in Chapter V will be of considerable value in furnishing the background for an understanding of present controversies. Step by step, belligerents have enlarged the sphere of interference with neutral trade to meet the circumstances of modern warfare, subordinating neutral interests to belligerent needs, until we reach the point where, in consequence of conscript armies,

the old distinction between absolute and conditional contraband is practically destroyed, and belligerents have even attempted to make neutrals bear the burden of a policy of reprisals against the enemy, and have asked to be excused from the duties of humanity because of the inconvenience of carrying them out.

Chapter VI shows the position of the neutral government with respect to trade in contraband, and clears up the distinction between what the individual citizen may do and the state may not do. In Chapter XII the doctrine of continuous voyage is viewed from every angle, and the conclusion is reached that the conditions of modern warfare demand that the destination of the goods be taken as the test and not merely the destination of the ship, as in the earlier British cases. Chapter XIV deals with contraband in the war of 1914-1915 and is a defense of the British reprisals against Germany. An appendix contains the Declaration of London accompanied by the report of the drafting committee, together with other documents bearing upon the subject. An excellent bibliography, classified according to subject matter, gives additional value to a work which has much intrinsic merit.

C. G. FENWICK.

Anglo-American Isthmian Diplomacy, 1815-1915. By MARY WILHELMINE WILLIAMS. (Washington: American Historical Association. 1916. Pp. xii, 356.)

This book shows great industry and very conscientious presentation of material covering, in considerable detail, the entire history of diplomatic negotiations between the United States and Great Britain in relation to Central America. Large use has been made of the unpublished diplomatic records of both countries; and to these and to printed sources, reference has been made with a minute care which is almost meticulous, but which must be helpful to anyone making an equally detailed study in the future. Without present means of checking the author's statements of fact, it can only be said that critical attention has plainly been given to the perplexingly contradictory versions of all Central American affairs.

The author's judgment is balanced, and her presentation of the subject appears just. The book is far, however, from being the last word on the subject. Useful as the volume is, it is lacking in the power to seize the truly vital, to bring out with distinctness the larger aspects of the topic. On the basis of this intensive study, more significant

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conclusions remain to be drawn. It would be unwarranted, however, to dwell too much on that which is lacking. The book offers a rather remarkable doctoral dissertation, and it must have given pleasure to the committee of the American Historical Association to award to it the Justin Winsor prize in 1914.

ROBERT T. CRANE.

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST

JOHN A. DORNEY

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UNITED STATES

Address of President Woodrow Wilson accepting the Lincoln Homestead at Hodgenville, Kentucky, presented to the government by the Lincoln Farm Association. Senate doc. 546. 1916. 5 p. 8°.

Antitrust Laws with Amendments, The Federal. List of cases instituted by the United States and citations of cases decided thereunder or relating thereto. July 1, 1916. 1916. 105 p. 8°. *Department of Justice*.

Beef Industries, Investigation of. Hearings . . . Committee on the Judiciary, House of Representatives . . . on H. Res. 148. . . . 1916. 545 p. 8°.

Business Activity in the United States and in leading foreign countries. Letter from the chief of the Bureau of Foreign and Domestic Commerce . . . to the chairman of the Senate Committee on Finance . . . Senate doc. 477. 1916. 78 p. 8°. *Department of Commerce, Bureau of Foreign and Domestic Commerce*.

Civil Service, Retirement of employees in the. Hearing before the Committee on Civil Service and Retrenchment. United States Senate . . . on S. 3079 . . . and S. 5673 . . . 1916. 183 p. 8°.

Criminal and Other Laws of the United States with reference to neutrality and foreign relations, Recommendations by the Attorney General for legislation amending the. 1916. 32 p. 8°. *Department of Justice*.

Economic Conference of the Allied Governments. [Inclosure-Translation] [Circular] 3311, *State Department*.

No. 3311 is a translation of the agreement only.

Employment Managers' Conference, Proceedings of. 1916. 82 p. 8°. House doc. 1155. Bulletin 196. *Department of Labor, Bureau of Labor Statistics*.

Held under the auspices of the National Society for the Promotion of Industrial Education and the Minneapolis Civic and Commerce Association, January 19 and 20, 1916.

European War. No. 3 . . . Diplomatic correspondence with belligerent governments relating to neutral rights and duties. 1916. 387 p. fol. *Department of State*.

Farm Loan Act, The federal. Approved July 17, 1916. . . . with marginal notes and index. Prepared by W. W. Flannagan . . . Senate document 500. 1916. 50 p. 4°. *Congress, Joint Committee on Rural Credits*.

RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST 801

• **French Spoliation Claims, The**, by George A. King. Reprinted from the American Journal of International Law, 1912—with additions. Senate doc. 451. 1916. 52 p. 8°.

Parcel Post Convention, between the United States of America and China. 1916. 7 p. 8° *Post Office Department*.

Railroads, Hours of Service on. Address of the President of the United States delivered at a joint session of the two houses of congress, August 29, 1916. House document 1340. 1916. 8 p. 8°.

Railroad Labor Arbitrations. Report of the U. S. Board of Mediation and Conciliation on the effects of arbitration proceedings upon rates of pay and working conditions of railroad employees. Senate doc. 483. 1916. 608 p. 8°

Revenue, To increase the, and for other purposes . . . Report [to accompany H. R. 16763]. House Report 922. 1916. 10 p. 8°. *House Committee on Ways and Means*.

Speech of Notification by Senator Ollie M. James and **Speech of Acceptance** by President Woodrow Wilson. Senate doc. 543. 1916. 18 p. 8°.

Speech of Notification by Senator Warren G. Harding and **Speech of Acceptance** by Mr. Charles E. Hughes. House document 1315. 1916. 19 p. 8°.

Steamship Lines engaged in transporting freight. Letter from the Chairman of the Interstate Commerce Commission . . . A report relative to corporate interests of railroads in vessels or steamship lines engaged in the coastwise trade of the United States. Senate doc. 492. 1916. 87 p. 8°. *Interstate Commerce Commission*.

Tariff Systems of South American Countries. By Frank R. Rutter . . . Tariff series no. 34. 1916. 308 p. 8°. *Department of Commerce. Bureau of Foreign and Domestic Commerce*.

Telephone Operating, Investigation of the wages and conditions of. Report. By Nellie B. Curry, field investigator. 1915. 58 p. 8°. *Commission on Industrial Relations*.

Trade Agreements Abroad. Articles relating to the resolution (S. 220) "Requesting the President to ascertain certain information relating to a recent commercial conference held in Paris, France, by certain European nations" . . . Senate doc. 491. 1916. 68 p. 8°. *Senate*.

Trade and Tariffs in Brazil, Uruguay, Argentina, Chile, Bolivia, and Peru, Report on. June 30, 1916. 1916. 246 p. 8°. *Federal Trade Commission*.

Trade of the United States with the World 1914-15. Imports and exports of merchandise into and from the United States, by countries and principal articles, during the years ending June 30, 1914 and 1915. 1916. 247 p. 8°. Miscellaneous series, no. 38. *Department of Commerce Bureau of Foreign and Domestic Commerce*.

Transportation Facilities. Summary of the reports submitted in response to a request of the Secretary of the Treasury on July 19, 1915, by several delegations to the First Pan American Conference. Senate doc. 497. 1916. 11 p. 8°.

Transportation of Troops to Mexican Border. Letter from the Secretary of War transmitting, in response to House resolution 292, information regarding the transportation of troops to the Mexican Border. House doc. 1311. 1916. 16 p. 8°. *War Department*.

Trust Laws and Unfair Competition. Joseph E. Davis, Commissioner of Corpora-

tions. March 15, 1915. 1916. 832 p. 8°. *Department of Commerce, Bureau of Corporations.*

Unemployment in the United States. House doc. 1154. 1916. 115 p. 8°. Bulletin 195. *Department of Commerce, Bureau of Labor Statistics.*

ALABAMA

Alabama's Public-School System: a comparative study. 1916. 32 p. 8°. Bulletin No. 55. *Department of Education.*

CALIFORNIA

California: the story of our State, by Percy Friars Valentine. 67 p. 12. *Board of Education.*

General Election Laws, Supplement of 1916 . . . 1916. 62 p. 8°. *Legislative Counsel Bureau.*

Housing Survey, A plan for a . . . 1916. 16 p. 8°. *Commission of Immigration and Housing.*

Taxation in California, Foreword on . . . 1916. 16 p. 8°. *Tax Commission.*

COLORADO

Unemployment and Relief, Committee on. Report of Secretary. 1916. 47 p. 8°.

Committee appointed by executive order of March 23, 1915.

CONNECTICUT

Constitution of the State of Connecticut as amended and in force January 1, 1916. [1916]. 27 p. 16°. *Secretary of State.*

FLORIDA

The Fourth Census of the State of Florida taken in the year 1915 . . . [1915]. 78 p. 8°. *Department of Agriculture.*

IDAHO

Constitution of the State of Idaho as adopted by Constitutional Convention held at Boise City, . . . Aug. 6, 1889. Ratified . . . Nov. 5, 1889. Effective July 3, 1890. And all amendments thereto . . . 1915. 92 p. 8°. *Secretary of State.*

ILLINOIS

Cost of State Government. Compiled by Finley F. Bell. [1916]. 46 l. charts. fol. *Legislative Reference Bureau.*

INDIANA

A Century of Progress. A study of the development of public charities and correction, 1790-1915. By Amos W. Butler, secretary of the Board of State Charities. [1916]. [10], 154. [2] p. 8°. *Board of State Charities.*

The Budget, by William T. Donaldson. Bulletin No. 6. January, 1916. 30 p. 8°. *Bureau of Legislative Information.*

City Government, Forms of, by Frank G. Bates. Bulletin No. 5. January, 1916. 27 p. 8°. *Bureau of Legislative Information.*

State Institutions, Control and Supervision of. Bulletin No. 7. March, 1916. 40 p. 8°. *Bureau of Legislative Information.*

IOWA

British Rule in India, Some aspects of, by Sudhindra Bose. 1916. 149 p. 8°. Bulletin 121. N. S. *University of Iowa.*

State Federation of Labor, The Iowa, by Lorin Stuckey. 1916. 147 p. 8°. Bulletin 120 N. S. *University of Iowa.*

Third Party Movements since the Civil War, with special reference to Iowa. A study in social politics, by Fred E. Haynes. 1916. 564 p. 8°. *Historical Society.*

KANSAS

Constitution of the State of Kansas . . . 1916. 31-67 p. 8°. *Secretary of State.*

MARYLAND

Industrial Accident Commission. First annual report . . . 1914-15. [1915.] 77, [2] p. 8°.

MASSACHUSETTS

Budget Procedure submitted to the governor, council and general court, Report on . . . 1916. 32 p. 8°. *Commission on Economy and Efficiency.*

Unemployment: a new method of gathering statistics. Report of sub-committee of the Relief agencies' committee of the Massachusetts State Committee on Unemployment. 1916. 13 p. 8°. *Board of Labor and Industries.*

MISSOURI

Children's Code Commission. Preliminary report of the committees . . . 1916. [20] p. mimeographed 4°.

NEBRASKA

The Torrens Land Transfer Act of Nebraska, by Thorne A. Browne. *Nebraska Legislative Reference Bureau.* Bulletin No. 10.

NEW YORK

The Constitution of the State of New York. Adopted Nov. 6, 1894, as amended and in force April 6, 1915. 166 p. 4°. *Constitutional Convention Commission.*

Enumeration of the Inhabitants, 1915, Report of the Secretary of State of. 1916. 1379 p. 8°. (assembly no. 17.)

OHIO

Budget Code and explanations . . . 1916. 42 p. 8°. *Budget Commission.*

SOUTH DAKOTA

Initiative and Referendum in South Dakota. 1916. [7]. p. 8°. Legislative Reference Bulletin No. 3. *Department of History.*

TEXAS

Judicial Reform in Texas. 1916. 39 p. 8°. Bulletin. 1916: No. 12. *University of Texas.*

Officers, Boards and Commissions of Texas, by Frank M. Stewart. *Texas State Library.* Legislative Reference Bulletin No. 3.

WASHINGTON

Comparative Statistics of Food stuffs and Fuel for three years as shown in a budget of the annual cost of living of a family of five persons based on prices prevailing in month of April of each year . . . [1916]. [3]. p. 8°. *Bureau of Labor.*

Primary Election, Registration and absent voters laws of Washington, . . . 1916. 55 p. 16°. *Secretary of State.*

WISCONSIN

The President of the United States, by Gaillard Hunt. [1915.] 75-98 p. 8°. Separate [reprint] No. 165. *Historical Society.*

From the proceedings of the society for 1915.

ARGENTINE

Argentine Foreign Trade 1913-1915, Route followed by the. Buenos Aires. 1916. 18 p. 8°. *Department of Agriculture, Direction General of Commerce and Industry.*

AUSTRALIA

Death and Invalidity in the Commonwealth, Committee concerning causes of. Preliminary Report. 1916. 6 p. fol. *Department of Trade and Customs.*

CANADA

European War, Second Supplement. Proclamations, orders in Council and documents relating to the. 1916. 527-1050 p. Appendices 351-537 p. 8°. *Department of the Secretary of State.*

GREAT BRITAIN

British Trade After the War (2). Summaries of the evidence taken by a sub-committee of the advisory committee to the Board of Trade on Commercial Intelligence in the course of their enquiry with respect to measures for securing the position, after the war, of certain branches of British industry. 1916. 38 p. fol. [Cd. 8275.] price 4d. [In continuation of parliamentary paper Cd. 8181.]

Economic Conference of the Allies held at Paris on June 14, 15, 16 and 17, 1916, Recommendations of the. 1916. 8 p. fol. [Cd. 8271.] price one penny. *Board of Trade.*

European War. Papers relating to German atrocities and breaches of the rules of war, in Africa. 1916. 86 p. fol. [Cd. 8306.] price 9½ d. *Foreign Office.*

Examination of Parcels and Letter Mails, Note from the United States Government regarding the. 1916. 6 p. fol. Miscellaneous: No. 20 (1916). [Cd. 8261] price 1d. *Foreign Office.*

Rebellion in Ireland, Royal Commission on the. Report of the Commission. [Cd. 8279.] price 2d. 1916. 14 p. fol.

State Purchase of the Licensed Liquor Trade, Report of the advisory committee on proposals for the. 1916. 6 p. fol. [Cd. 8283.] Price 1d. *Home Office.*

HAITI

Convention entre la République d'Haiti et les États-Unis d'Amérique. Port-au-Prince. 1916. 8 p. 4°. *Département des Relations Extérieures.*

MEXICO

Nota Envida por el Gobierno Constitucionalista al de La Casa Blanca. Con motivo de las incursiones de tropas Americanas en territorio Mexicano. Mexico. 1916. 20 p. 8°. *Secretaría de Relaciones Exteriores.*

INTERNATIONAL

Cour permanente d'arbitrage, Rapport du conseil administratif de la, sur les travaux . . . , sur le fonctionnement des services administratifs et sur les défenses pendant l'année 1915. La Haye [1916]. 57 p. fol. (*Bureau international de la Cour permanente d'arbitrage*).

International High Commission. First edition of the committee reports and resolutions. Adopted at the first general meeting, held in Buenos Aires, in April, 1916. Published by order of the central executive council. Washington. 1916. 45 p. 16°.

INDEX TO RECENT LITERATURE—BOOKS AND PERIODICALS¹

CONSTITUTIONAL LAW AND ADMINISTRATION

Books

Barone, Domenico. I ricorsi elettorali e la recente giurisprudenza della V sezione del consiglio di stato. Milano: Società editrice libraria. Pp. 61.

Barone, Domenico. La legittimazione per decreto reale nel sistema della legge e nella pratica amministrativa. Milano: Società editrice libraria. Pp. 52.

Baudin, Pierre. Le budget et la déficit. 10^e ed. Paris: Alcan. Pp. vi, 252.

Chu, Chin. The tariff problem in China. New York: Columbia University Press. Pp. 192.

Clarke, Samuel B. What may be done to enable the courts to allay the present discontent with the administration of justice. New York. Pp. 41.

Connor, Jeremiah, F. Employers' liability, workmen's compensation and liability insurance. New York: Spectator Company. Pp. 9, 262.

Curtis, Lionel. The problem of the commonwealth. New York: The Macmillan Company. Pp. 247.

Dazet, Georges. Les orphelins de la guerre. Leur situation juridique. Paris: M. Giard et E. Brière.

Douchez, A. Guerre de 1914-1915. Recueil des lois, décrets, etc. Alger: Adolphe Jourdan. Pp. 120.

Elliott, Edward. American government and majority rule. Princeton: Princeton University Press.

Errera, Paul. Traité de droit public belge. Paris: M. Giard et E. Brière.

Gouvernement général de l'Afrique équatoriale française. Paris: Emile Larose. Pp. 307.

Gouvernement général de l'Afrique occidentale française. Paris: Emile Larose. Pp. 703.

Guthrie, William D. Magna Carta and other addresses. New York: Columbia University Press.

Iorio, Carmine. Elementi di diritto amministrativo e contabilità di stato. Perugia: Unione tipografica cooperativa. Pp. 22.

Jèze, Gaston. Les finances de guerre de l'Angleterre. Paris: M. Giard et E. Brière. Pp. 252.

Justice Militaire. Limoges: Henri Charles-Lavauzelle. Pp. 167.

Leger, Louis. La liquidation de l'Autriche-Hongrie. Paris: Alcan.

Lecouturier, Henri. L'impôt général sur le revenu. Paris: V Hugonis. Pp. iv, 285.

¹ Data not available for publications issued in Austria-Hungary and Germany.

- Macauley, Ward.* Reclaiming the ballot. New York: Duffield and Company. Pp. 109.
- McClure, W.* State constitution making. Nashville: Marshall and Bruce Company.
- Mercier, Auguste.* L'impôt sur le revenu. Paris: Georges Roustan.
- Myrick, Herb.* The federal farm loan system. New York: O. Judd Company. Pp. 238.
- Odgers, Walter Blake.* Nationality and naturalisation. Jordan. Pp. 92.
- Orth, Samuel P.* The imperial impulse: background studies of Belgium, England, France, Germany, and Russia. New York: The Century Company.
- Singh, St. Nihal.* The King's Indian allies. London: Sampson Low, Marston and Company.
- Venezian, Emilio.* La legislazione sulla proprietà industriale e la tutela dell'industria nazionale. Torino: Unione tipografica editrice. Pp. 7.
- Vogt, William.* La Suisse allemande au début de la guerre de 1914. Poitiers: G. Roy. Pp. 167.
- Wilson, Woodrow.* The President of the United States. Harper and Brothers. Pp. 71.

Articles

- Austria-Hungary.** The end of a ramshackle empire. *Suum Cuique.* Contemp. Rev. September, 1916.
- Belgium.** The future of Belgium. "Y." Fort. Rev. September, 1916.
- British Empire.** Imperial reconstruction. *Sidney Low.* Edinb. Rev. July, 1916.
- Rhodes and Parnell on Imperial federation. *J. G. Swift-MacNeill.* Fort. Rev. July, 1916.
- The reconstruction of the British Empire. *Sir Clement Kinloch-Cooke.* Fort. Rev. August, 1916.
- Reconstruction of the British Empire. *R. L. Schuyler.* Pol. Sci. Quart. September, 1916.
- China.** La republique chinoise. *Scié Ton Fa.* La Paix par Le Droit. Juin, 1916.
- Administration of Chinese government railways. *Ching-Chun Wang.* Chinese Soc. and Pol. Sci. Rev. April, 1916.
- The Chinese district magistrate. *L. K. Tao.* Chinese Soc. and Pol. Sci. Rev. April, 1916.
- The organization of the Waichiao Pu [Foreign Office] *Yü Chün Chang.* Chinese Soc. and Pol. Sci. Rev. April, 1916.
- The reform of land tax in China. *Ung Yuen Hsü.* Chinese Soc. and Pol. Sci. Rev. April, 1916.
- German Empire.** The dissolution of the German Empire. *Yves Guyot.* Nine. Cent. September, 1916.
- Holland.** Legislation in Holland during the year 1915. *A. L. P. Am. Bar. Ass'n Jour.* July, 1916.
- House of Commons.** The House of Commons and the war. *Rt. Hon. Charles Hobhouse.* Contemp. Rev. August, 1916.

Military Courts. Les tribunaux militaires en temps de guerre. *Joseph Barthélemy*. Rev. du Droit et de la Sci. Pol., xxxiii^e, No. 2. 1916.

Suffrage. The new parliamentary register and votes for women. *Millicent Garrett Fawcett*. Contemp. Rev. July, 1916.

—— The woman voter and the spoils system in Chicago. *Edith Abbott*. Nat'l. Mun. Rev. July, 1916.

Taxation. Exemption of real estate from taxation. *Martin Sazé*. The American City. August, 1916.

—— Tax exemption of American Church property. *Carl Zollmann*. Mich. Law Rev. June, 1916.

—— Deux ans de guerre sans relèvements d'impôts. *Fernand Faure*. Rev. Pol. et Parl. Août, 1916.

INTERNATIONAL RELATIONS

Books

Albin, Pierre. La guerre allemande: d'Agadir à Sarajevo (1911-1914) Paris: Alcan. Pp. 256.

Alglave. Problèmes de guerre. Le droit de la guerre. Nancy-Paris: Berger-Levrault. Pp. 91.

Andler, Ch. Collection de documents sur le Pangermanisme. Paris: Conard. 4 vols.

Aragon, Henry. Les guerres dans l'antiquité et la guerre moderne. Perpignan: J. Comet. Pp. 256.

Aus deutschen Kriegsgefangenenlagern. Francfort-sur-Mein: Rütten. Pp. 172.

Baie, Eugene. Le droit des nationalités. Paris: Alcan.

Balkanicus. La Bulgarie; ses ambitions; sa trahison. Evreux: Paul Hérissé. Pp. x, 296.

Balfour, Arthur J. The freedom of the seas. London: T. Fisher Unwin.

Bard, Harry Erwin. South America. Study Suggestions. Boston: D. C. Heath and Company. Pp. 68.

Belin, J. P. Les relations économiques entre la France et la Grande-Bretagne. Paris: Belin Frères.

Belloc, H. The elements of the Great War. Second phase. New York: Hearst Intern. Lib. Co.

Bertrand, Adrien. La conquête de l'Autriche-Hongrie, par l'Allemagne. Nancy-Paris: Berger-Levrault. Pp. 59.

Bland, J. O. P. trans. Germany's violations of the laws of war, 1914-15. London: Heinemann. Pp. 381.

Blondel, Georges. La guerre et le problème de la population. Paris: Le thielleux.

de Card, E. Rouard. La Turquie et le protectorat français en Tunisie, 1881-1913. Paris: J. Gamber. Pp. vi, 92.

di Cesarò, G. A. Germania imperiale e il suo programma in Italia. Firenze: libr. della Voce. Pp. 148.

Cestre, Ch. L'Angleterre et la guerre. Paris: Didier. Pp. 352.

Cheng, F. T. Rules of private international law, determining capacity to contract. London: Stevens and Sons. Pp. 134.

- Chuquet, A.* Prouesses allemandes. Paris: Fontemoing. Pp. 285.
- de Choppin, Joey.* Les Boches en Belgique. Montpellier: Manufacture de la Charité. Pp. 56.
- Crouvezier, G.* La guerre aérienne. Nancy-Paris: Berger-Levrault. Pp. 68.
- Curtis, L., ed.* Commonwealth of nations. New York: The Macmillan Company. Pp. 741.
- Davis, George B.* The elements of international law. 4th ed. New York: Harper and Brothers. Pp. 668.
- Déjardin, Jacques.* L'effet de la guerre sur les rapports entre locataires et propriétaires. Paris: Rousseau et C^{ie}. Pp. 290.
- Delaire, A.* Au lendemain de la victoire. Le nouvel équilibre européen. Paris: Nouvelle Librairie nationale. Pp. xvi, 380.
- Destree, Jules.* Belgium and the principle of nationality. London: Council for the Study of International Relations. Pp. 45.
- Destrées Jules.* L'effort britannique. Contribution de l'Angleterre à la guerre européenne. Paris: G. Van Oest. Pp. xii, 277.
- Dillon, E. J.* England and Germany. New York: Brentano's.
- Dymond J.* War: its causes, consequences, lawfulness, etc. Friends Peace Committee. Pp. 80.
- Elder, T. C.* The coming crash of peace, and Britain's mechanical renaissance. London: Simpkin. Pp. 149.
- Evans, Lawrence B.* Leading Cases on International Law. Chicago. Callaghan and Company.
- Farrow, Thomas, and Crotch, Walter.* The coming trade war. Chapman and Hall. Pp. 164.
- (Fauchille, Paul.)* Recueil de documents intéressant de droit international. Paris: A. Pedone. Pp. vii, 414.
- Finley, J.* Les Français au cœur de l'Amérique. Paris: Librairie Armand Colin.
- La Fontaine, Henri.* The great solution. Magnissima charta. Boston: World Peace Foundation. Pp. 177.
- Freehoff, Joseph C.* America and the canal title. New York: Sully and Kleinteich.
- Fried, Alfred H.* The restoration of Europe. New York: The Macmillan Company. Pp. 157.
- Garner, James W.* Some questions of international law in the European war. Nos. IX and X. Reprinted from the American Journal of International Law.
- Gay de Montellá, R.* Diez años de política internacional en el Mediterráneo, 1904-1914. Madrid: Fernando Fe. Pp. 242.
- Gentile, Mazzini Nunzio.* Libertà dei mari e cavi sottomarini. Messina: Aurora, G. Micale. Pp. 84.
- Guevara, L.* Towards reorganization of international finance. London: Simpkin. Pp. 86.
- Guiheneuc, Olivier.* Dreadnought ou submersible. Evreux: Paul Hérissey. Pp. 320.
- Gulick, Sidney L.* America and the Orient. New York: Missionary Education Movement. Pp. 100.

Guyot, Yves. The causes and consequences of the war. New York: Brentano's.

Hearne, R. P. Zeppelins and super-zeppelins. New York: The John Lane Company.

Hobhouse, L. T. Questions of war and peace. London: T. Fisher Unwin.

Hornbeck, Stanley K. Contemporary politics in the Far East. New York: D. Appleton and Company.

Hovelague, E. The deeper causes of the war. New York: E. P. Dutton and Company.

Huberich, C. H., and Nicol-Speyer, A., J. U. D., ed. German legislation for the occupied territories of Belgium. Fourth series. The Hague: Martinus Nijhoff.

L'Italie et la guerre, d'après le témoignage de ses hommes d'État. Paris: Colin. Pp. xiii, 146.

de Jehay, Comte Fr. L'invasion du Grand-Duché de Luxembourg en août, 1914. Paris: Perrin. Pp. viii, 63.

Jones, Chester Lloyd. Caribbean interests of the United States. New York: D. Appleton and Company. Pp. 379.

Lanchester, F. W. Aircraft in warfare. New York: D. Appleton and Company.

Macdonald, J. A. M. European international relations. London: T. Fisher Unwin.

von Mach, Edmund, ed. Official diplomatic documents relating to the outbreak of the European war. New York: The Macmillan Company.

Maugain, Gabriel. L'opinion italienne et l'intervention de l'Italie dans la guerre actuelle. Paris: Édouard Champion. Pp. 105.

Millard, Thomas F. Our Eastern question. New York: The Century Company. Pp. 543.

Montolín y de Tógores, José de. Los extranjeros ante la legislación español. Barcelona. Pp. 428.

Naumann, F. Central Europe. London: King and Son.

Neilson, Francis. How diplomats make war. Rev. ed. New York: B. W. Huebsch.

Newbold, J. T. Walton. How Europe armed for war. 1871-1914. London: Blackfriar's Press. Pp. 108.

Nicholson, Soterios. War or a united world. Washington, D. C.: Washington Publishing House.

Des Ombiaux, Maurice. France et Belgique. Paris: Bloud et Gay. Pp. 63.

Les origines diplomatiques de la guerre de 1870-1871. Paris: Gustave Ficker. Pp. 426.

Persico, Clemente. Di una nuova questione in tema di pagamenti internazionali. Milano: F. Vallardi.

Phillipson, Coleman. International law and the great war. New York: E. P. Dutton and Company. Pp. 407.

Phillipson, Coleman. Termination of war and treaties of peace. New York: E. P. Dutton and Company.

Pourparlers diplomatiques (2 avril 1914-6 avril 1915) XI. Nancy. Paris. Pp. 156.

von Praag, L. Jurisdiction et droit international public. La Haye: Belinfante frères.

Quin, M. The problems of human peace. London: T. Fisher Unwin.

Reinach, Joseph. La guerre de 1914-1915. Paris: Eugène Fasquelle. Pp. xi, 395.

Rey, A. Augustin. La question des Balkans devant l'Europe. 7^e ed. Paris: Jules Meynial. Pp. 77.

Ricci, Busatti Arturo. La proposta del governo russo circa i prigionieri di guerra di nazionalità italiana. Roma: Athenaeum. Pp. 11.

Rumeau, Mgr. Le Pape et la guerre. Paris: P. Feron-Vrau. Pp. 23.

Schurté, Edouard. L'Alsace française. Tours: E. Arrault et C^{ie}. Pp. 334.

Schurman, Jacob Gould. The Balkan Wars. 1912-1913. 3d ed. Princeton: Univ. Press.

Scott, James Brown, ed. Hague conventions and declarations of 1899 and 1907. 2d ed. Oxford: Clarendon Press.

Scott, James Brown. An international court of justice. New York: Oxford Univ. Press.

Scott, J. W. R. Japan, Great Britain and the world. Tokyo: Japan Advertiser.

Staggs, W. H. German conspiracies in America. London: T. Fisher Unwin. Pp. xxviii, 332.

Steed, Henry Wickham. L'effort anglais. Paris: Colin. Pp. 40.

Teissonnière, Paul. La Belgique et le drame de 1914. Nîmes. Pp. 32.

Toynbee, Arnold J. The new Europe. New York: E. P. Dutton and Company. Pp. 85.

Tyler, Royall, ed. Calendar of letters, despatches and state papers relating to the negotiations between England and Spain. Vol. xi. London.

Vattel, Emmerich de. Le droit des gens; ou principes de la loi naturelle. 3 vols. v.3. trans. of ed. of 1758 by C. G. Fenwick. Washington: Carnegie Institute.

Wallace, Edgar. The war of the nations. Newnes. Pp. 308.

Waxweiler, Emile. Belgium and the great powers. New York: G. P. Putnam's Sons.

Weyl, Walter E. The great decision. New York: The Macmillan Company.

Withers, Hartley. International finance. New York: E. P. Dutton and Company. Pp. 186.

Woolf, L. S. International government. Two reports. New York: Brentano's. Pp. 412.

Articles

Argentina. Republica argentina, ministerio de relaciones exteriores y culto . . . documentos oficiales. Buenos-Aires: 1916.

Blockades. Legality of the blockades instituted by Napoleon's decrees and the British orders in council, 1806-1813. Archibald H. Stockder. Am. Jour. Int. Law. July, 1916.

— The freedom of the seas. H. Sidebotham. Atlan. Mo. August, 1916.

China. The legitimate bounds of most-favored-nation treatment in China. Kuo Yün-Kuan. Chinese Soc. and Pol. Sci. Rev. April, 1916.

- Commerce.** A commercial league of defense. *Harold Cox*. Edinb. Rev. July, 1916.
- La guerre commerciale sous-marine. *J. Perrinjaquet*. Rev. Gén. de Droit Int. Pub. Mars-Aout, 1916.
- Le commerce austro-allemand dans nos colonies. *Perreau-Pradier*. Rev. Pol. et Parl. Juillet, 1916.
- World struggle for shipping supremacy. *George Weiss*. Forum. Aug., 1916.
- Contraband.** The "Zamora" judgment. *Sir Francis Piggott*. Nine. Cent. July, 1916.
- East Africa.** British and German East Africa. *A. C. Yate*. Nine. Cent. Aug., 1916.
- Economic policy.** Les projets d'union économique entre les alliés dans l'hiver 1915-16. *E. B. Dubern*. Rev. des Sci. Pol. Juin, 1916.
- La politique économique d'après guerre. Rev. Pol. et Parl. Août, 1916.
- Germany.** The hopelessness of Germany's position. *Politicus*. Fort. Rev. Aug., 1916.
- Greece.** Greece and the war. *H. Charles Woods*. Fort. Rev. Sept., 1916.
- International justice.** International justice. *James Scott Brown*. Penn. Law Rev. June, 1916.
- International Law.** Le droit public en temps de la guerre. *Joseph-Barthélemy*. Rev. du Droit et de la Sci. Pol. xxxiii^e, No. 2. 1916.
- La guerre actuelle et le droit des gens. *A. Pillet*. Rev. Gén. de Droit Int. Pub. Mars-Août, 1916.
- Reconstruction of international law. *Franz von Liszt*. Penn. Law Rev. June, 1916.
- Judicial decisions involving questions of international law. *Am. Jour. Int. Law*. July, 1916.
- Public documents relating to international law. *George A. Finch*. *Am. Jour. Int. Law*. July, 1916.
- International law and the law of the land. *W. E. Wilkinson*. *Law. Mag. and Rev.* August, 1916.
- Une tentative française pour l'établissement d'un droit international ouvrier. *N. Krawtchenko*. Rev. Gén. de Droit Int. Pub. Mars-Août, 1916.
- Islam.** The disruption of Islam. *Duncan B. Macdonald*. *Yale Rev.* Oct., 1916.
- Italian Crisis.** La crise nationale italienne. *Stéphane Piot*. Rev. des Sci. Pol. Juin, 1916.
- Italy and England.** Popular Italian sentiment and the English alliance. *Thomas Okey*. *Contemp. Rev.* July, 1916.
- Japan.** Japan's part in the war. *Robert Machray*. Nine. Cent. Sept., 1916.
- Japan and America.** Japan and America. *Dr. Jokichi Takamine*. Forum. Aug., 1916.
- Mexico.** Last phases in Mexico. *Henry Lane Wilson*. Forum. Sept., 1916.
- Our navy and Mexico. *Samuel Crowther*. Forum. Aug., 1916.
- What is the matter with Mexico? *Sidney Austin Witherbee*. Forum. Sept., 1916.

- Migration.** Exode et immigration en Alsace-Lorraine. *P. Vidal de la Blache*. *Rev. des Sci. Pol.* Juin, 1916.
- Morocco.** La justice française au Maroc. *M. Berge*. *Rev. gen. du droit, de la Legis. et de la Juris.* Juin, 1916.
- La nouvelle législation du protectorat français du Maroc. *Louis Renault*. *Rev. des Sci. Pol.* Juin, 1916.
- Naval Policy.** Our naval policy and position. *W. H. Henderson*. *Contemp. Rev.* July, 1916.
- Neutrality.** Ignominious neutrality. *Philip Marshall Brown*. *N. Am. Rev.* August, 1916.
- Neutrality and the sale of arms. *Charles Noble Gregory*. *Am. Jour. Int. Law.* July, 1916.
- Neutrality in Northern Europe. *Rt. Rev. Herbert Bury*. *Nine. Cent.* July, 1916.
- Nicaragua.** A treaty in chancery. *George Harvey*. *N. Am. Rev.* Aug., 1916.
- Pangermanism.** Les pangermanistes et la guerre. *Pierre Rain*. *Rev. des Sci. Pol.* Juin, 1916.
- Persia.** Persia and the frustration of German schemes. *Robert Machray*. *Fort. Rev.* July, 1916.
- Prizes.** Jurisprudence en matière de prises maritimes. *Rev. Gén. de Droit Int. Pub.* Mars-Août, 1916.
- Requisition of Ships.** La requisition des navires allemands en Portugal. *J. Barsdevant*. *Rev. Gén. de Droit Int. Pub.* Mars-Août, 1916.
- Roumania.** The Roumanian factor in the problem of the Near East. *J. A. R. Marriott*. *Edinb. Rev.* July, 1916.
- Switzerland.** Switzerland and the war. *Sir Jacob Preston*. *Contemp. Rev.* Sept., 1916.
- Switzerland's part. *Marie-Marguerite Fréchette*. *Atlan. Mo.* July, 1916.
- Thinking internationally. *Rt. Hon. The Earl of Cromer*. *Nine. Cent.* July, 1916.
- United States.** America's part in the great war. *George Stanley*. *Forum.* Aug., 1916.
- American perplexities. *James Davenport Whelpley*. *Fort. Rev.* Aug., 1916.
- "Kultur" in American politics. *Frank Perry Olds*. *Atlan. Mo.* Sept., 1916.
- Our relations with Great Britain. *Arthur Bullard*. *Atlan. Mo.* Oct., 1916.
- President Wilson's administration of foreign affairs. *David Jayne Hill*. *N. Am. Rev.* Sept., 1916.
- Washington and entangling alliances. *Roland G. Usher*. *N. Am. Rev.* July, 1916.
- War.** Documents sur la guerre de 1914. *Rev. Gén. de Droit Int. Pub.* Mars-Août, 1916.
- Violation systématique des lois de la guerre par les Austro-Allemands. *P. Pic*. *Rev. Gén. de Droit Int. Pub.* Mars-Août, 1916.
- War Finances.** Dépenses de guerre et coût de la guerre. *G. Pradelle, A Camille, et C. Gide*. *La Paix par Le Droit.* Juin, 1916.

JURISPRUDENCE

Books

D'Alessio, Francesco. L'elemento giuridico nella scienza della finanza. Milano: Società editrice libraria. Pp. 14.

von Bar, Karl Ludwig and others. A history of continental criminal law. Tr. by T. S. Bell and others. New York: J. B. Lippincott Company. Pp. 617.

Bastid, Paul. De la fonction sociale des communautés taissables de l'ancien droit. Tours: Paul Salmon. Pp. 223.

Colin, Ambroise et Capitant, H. Cours élémentaire de droit civil français. Paris: Dalloz. Pp. xvii, 1088.

Cruzado, Sanz, Félix. Legislación y jurisprudencia de aguas. . . . Madrid: Fernando Fe. Pp. 670.

Dalloz. Répertoire pratique de législation, de doctrine et de jurisprudence. Paris: Dalloz. Pp. 985.

Davies, J. E. Trust laws and unfair competition. Washington, D. C.: Government Printing Office.

Le droit pendant la guerre. Paris: Marchal et Godde. Pp. viii, 216.

Farwell, Rt. Hon. Sir G. Concise treatise of powers. 3d ed. London: Stevens and Sons. Pp. 767.

Garrand, D. Traité théorique et pratique du droit pénal français. 3^e ed. Mayenne: C. Colin. Pp. 729.

Harispe, Hippolyte tr. Projet de code pénal pour la République Argentine. . . . Laval: E. Barnéoud et C^{ie}. Pp. 157.

King, H. H., ed. Butterworth's Twentieth century statutes. Vol. xi. Pp. xxxiv, 370.

Medina, Leon y Marañon, Manuel. Leyes civiles de España. Madrid: Est. Tip. de los Hijos de Tello.

Oxford studies in social and legal history. Vol. 5. Oxford: Clarendon Press. Pp. 142.

Palmer, Thomas W. Guide to the law and legal literature of Spain. Washington: Government Printing Office.

Odriozola y Grimaud, Carlos de. Diccionario de jurisprudencia hipotecaria de España. Madrid: Hijos de Reus. Pp. 870.

Thaller, E. Traité élémentaire de droit commercial à l'exclusion du droit maritime. 5^e ed. Paris: Rousseau et C^{ie}. Pp. 1164.

Wigley, F. G., ed. Bengal Code, containing the regulations, ordinance and local acts. . . . in Bengal. 4th ed. Pp. 991.

Articles

Criminal Law. Legislative and judicial tendencies in the field of criminal law. *Chester G. Vernier.* Ill. Law Rev. June, 1916.

England. The office of the Lord Chief Justice of England. *Sir Edward Bra-brook.* Fort. Rev. Sept., 1916.

Jurisprudence. La jurisprudence administrative sur les dommages résultant des travaux publics et son application aux dommages de guerre. *Leon Michoud.* Rev. du Droit Pub. et de la Sci. Pol., xxxiii^e, No. 2, 1916.

Reform. Le projet de reforme judiciaire. *Albert Tissier*. Rev. Pol. et Parl. Juin, 1916.

War Crimes. War crimes, their prevention and punishment. *Hugh H. L. Bellot*. Nine. Cent. Sept., 1916.

LOCAL GOVERNMENT

Books

du Chapois, F. Drion. Le droit communal belge. Heyst sur Mer: Alfred Tytgat. Pp. 430.

Christy, A. G. The municipally-operated electrical utilities of Western Canada.

Clarke, J. J. Outlines of English local government. Liverpool: Bookseller's Company. Pp. 40.

Dawson, William Harbutt. Municipal life and government in Germany. 2d ed. New York: Longmans Green and Company. Pp. 394.

Munro, William Bennett. The government of American cities. New and rev. ed. New York: The Macmillan Company. Pp. 10, 400.

Roberts, Kate Louise. The city beautiful, a study of town planning and municipal art. White Plains, N. Y.: H. W. Wilson Company.

Scholefeld, Joshua, ed. Encyclopedia of local government law. New York: N. A. Phemister Company. 1916. 13 volumes.

Stowe, J. Albert. The voter in Command. Newark. Pp. 62.

Articles

City Plans. Recent city plan reports. *Charles Mulford Robinson*. Nat'l Mun. Rev. July-Oct., 1916.

Civil Service. Progress in municipal civil service. *F. W. Coker*. Nat'l Mun. Rev. Oct., 1916.

Education. The Gary system. *Ide G. Sargent*. Forum. September, 1916.

——— Instruction in municipal government in the universities and colleges of the United States. *William Bennett Munro*. Nat'l Mun. Rev. Oct., 1916.

——— Municipal universities of the United States. *John L. Paterson*. Nat'l Mun. Rev. Oct., 1916.

Elections. A new sytem of elections for St. Louis. *Percy Werner*. Nat'l Mun. Rev. October, 1916.

——— Bi-partisanship and vote manipulation in Detroit. *Arthur C. Mills-paugh*. Nat'l Mun. Rev. Oct., 1916.

——— Election reforms. *Clinton Rogers Woodruff*. Nat'l Mun. Rev. Oct., 1916.

France. French cities in war time. *Georges Benoit-Levy*. Nat'l Mun. Rev. Oct., 1916.

Legal Decisions. Legal decisions affecting municipalities. *Compiled by L. H. Sweet*. The Am. City. Sept., 1916.

——— The courts and excess condemnation. *Charles Reitell*. The Am. City. Sept., 1916.

Liquor Question and Reform. The liquor question and municipal reform. *George C. Sikes*. Nat'l Mun. Rev. July, 1916.

Local Option. Local option in the United States. *Philip A. Boyer.* Nat'l Mun. Rev. Oct., 1916.

Municipal Bonds. Municipal bonds over the counter and in small denominations. *Arthur B. Chapin.* Nat'l Mun. Rev. Oct., 1916.

Municipal Court. The municipal court of Cleveland. *Raymond Moley.* Nat'l Mun. Rev. July, 1916.

Municipal Research Bureau. The Philadelphia bureau of municipal research. *George Burnham, Jr.* Nat'l Mun. Rev. July, 1916.

Social Survey. Progress of the civic and social survey idea. *Murray Gross.* Nat'l Mun. Rev. July, 1916.

Statistics. A new census report of municipal statistics. *The Am. City.* Sept., 1916.

War and Local Administration. L'administration locale et la guerre. *Louis Rolland.* Rev. du Droit et de la Sci. Pol., xxxiii^e, No. 2. 1916.

POLITICAL THEORY AND MISCELLANEOUS

Angell, Norman. The dangers of half-preparedness. New York: G. P. Putnam's Sons. Pp. 129.

Barker, J. Ellis. The foundations of Germany. Smith, Elder. Pp. 288.

Bechhofer, C. E. Russia at the crossroads. New York: E. P. Dutton and Company.

Beck, James M. The war and humanity. New York: G. P. Putnam's Sons.

Boubée, Joseph. La Belgique loyale, heroïque et malheureuse. Paris: Plon-Nourrit et C^{ie}. Pp. viii, 252.

Boutroux, E. L'idée de liberté en France et en Allemagne. Paris: Editions de Foi et Vie.

Brooks, Eugene Clyde. Woodrow Wilson as President. Chicago: Row, Peterson and Company. Pp. 572.

Brown, Harry G. Transportation rates and their regulation. New York: The Macmillan Company.

Carlyle, R. W. and Carlyle, A. J. History of mediaeval political theory in the West. v. 3. New York: G. P. Putnam's Sons. Pp. 218.

Creel, G. Wilson and the issues. New York: The Century Company.

Creighton, L. and others. The international crisis: The theory of the state. New York: Oxford University Press.

De Souza, Count Charles. Germany in defeat. New York: E. P. Dutton and Company. Pp. 282.

Gaultier, Paul. La mentalité allemande et la guerre. Paris: Alcan.

Gill, Conrad. National power and prosperity. London: T. Fisher Unwin.

González Blanco, Edmundo. Carranza y la revolución de Mexico. 2 ed. Madrid: Helénica. Pp. 590.

Hagar, George J. Plain facts about Mexico. Harper and Brothers. Pp. 80.

Hayes, Carlton J. H. A political and social history of modern Europe. New York: The Macmillan Company. 2 vols. Pp. 598, 726.

Hughes, Thomas J. State socialism after the war—what it is—how it works. Philadelphia: George W. Jacobs and Company.

Kerrick, Capt. H. S., U. S. A. Military and naval America. New York: Doubleday, Page and Company.

Krehbiel, E. Nationalism, war and society. New York: The Macmillan Company.

Lajpat, Rouja. Young India. New York: Huebsch. Pp. 301.

Lapp, John A. Our America. The Elements of Civics. Indianapolis: Bobbs Merrill Co. Pp. 399.

Lévy, R. G. Banques d'émission et trésors publics. 2d ed. Paris: Hachette.

McLaren, W. W. A political history of Japan during the Meiji Era, 1867-1912. New York: Charles Scribner's Sons. Pp. 380.

Maillard, Charles. Le socialisme et la reconstitution intégrale de la France. Paris: Levé. Pp. 103.

de Medelsheim, G. Cerfberr. Le Nerf de la guerre. Les ressources de la défense nationale. Nancy-Paris: Berger-Levrault. Pp. 171.

Mont, Jules. La défense nationale et notre parlement. Paris: Perrin et C^{ie} Pp. 288.

Noyes, Alexander Dana. Financial chapters in the war. New York: Charles Scribner's Sons.

L'Origine allemande de l'anticléricalisme en France. Orléans: Auguste Gout et C^{ie}. Pp. 12.

Orrier, Ch. Les leçons économiques de la guerre. Paris: H. Dunod et E. Pinat. Pp. 131.

Ransom, William L. Charles Hughes: The statesman as shown in the opinions of the jurist. New York: E. P. Dutton and Company. Pp. 352.

Reulos, Alexandre. Manuel des séquestres. Paris: La Société du Recueil. Sirey. Pp. 550.

Rose, J. Holland. Nationality in modern history. New York: The Macmillan Company.

Santo, J. Les méfaits de l'anticléricalisme pendant la guerre. Orléans: Auguste Gout et C^{ie}. Pp. 28.

Simpson, J. Y. The self-discovery of Russia. New York: George H. Doran Company.

Ward, A. W. Germany 1815-1890. Vol. I 1815-1852. Cambridge Historical series. Cambridge: University Press. Pp. xiv, 591.

Webb, Sidney. Towards social democracy? London: Allen and Unwin. Pp. 48.

Wyzewa, Teodor de. La nouvelle Allemagne. Paris: Perrin et C^{ie}. Pp. 317.

Young, Arthur Nichols. The single tax movement in the United States. Princeton, N. J.: Princeton University Press.

Zolla, Daniel. La situation financière après vingtdeux mois de guerre. Chalon-sur-Saône: E. Bertrand. Pp. 12.

Articles

Alcoholism. Alcohol and crime. *Robert Blackwood.* Forum. August, 1916.

Citizenship. Training in the schools for civic efficiency. *J. Lynn Barnard.* Am. Acad. of Pol. and Soc. Sci. Sept., 1916.

Danish Islands. The story of the Danish Islands. *Willis Fletcher Johnson*. N. Am. Rev. Sept., 1916.

Democracy. Current theories of democracy. *W. H. Mallock*. Nine. Cent. Aug., 1916.

——— Has America gone too far in democracy? *W. R. Boyd*. N. Am. Rev. July, 1916.

——— Democratic control of foreign policy. *G. Lowes Dickinson*. Atlan. Mo. Aug., 1916.

Democratic Party. The achievements of the Democratic party. *Charles W. Eliot*. Atlan. Mo. Oct., 1916.

Finances. Germany's financial position. *H. J. Jennings*. N. Am. Rev. July, 1916.

Initiative and Referendum. Safeguarding the petition in the initiative and referendum. *F. W. Coker*. Am. Pol. Sci. Rev. Aug., 1916.

——— Proper safeguards for the initiative and referendum. *W. A. Schnader*. Am. Pol. Sci. Rev. Aug., 1916.

——— Recent experience with the initiative and referendum. *Robert E. Cushman*. Am. Pol. Sci. Rev. Aug., 1916.

Ireland. Sinn Fein. *Edinb. Rev.* July, 1916.

——— Ways out of the Irish labyrinth. *D. C. Lathbury*. Nine. Cent. July, 1916.

——— The Irish insurrection. *Sidney Brooks*. N. Am. Rev. July, 1916.

——— Sir Roger Casement and Sinn Fein. *H. W. Nevins*. Atlan. Mo. Aug., 1916.

——— The Irish problem. *Sir W. F. Barrett*. Contemp. Rev. Aug., 1916.

——— Ireland and the Ministerial changes. *Auditor Tatum*. Fort. Rev. Aug., 1916.

——— Is there a way out of the chaos in Ireland? *William O'Brien*. Nine. Cent. Sept., 1916.

Judiciary. Giving political orders to the judiciary. *J. H. W.* Ill. Law Rev. June, 1916.

Labor Problems. Labor problems after the war. *A. C. Pigou*. Contemp. Rev. Sept., 1916.

——— Labor and the railroads. *George Weiss*. Forum. Sept., 1916.

Land Holdings. The anti-small holdings mania. *Christopher Turnor*. Nine. Cent. Sept., 1916.

Merchant Marine. A federal merchant marine. *Paul Revere Frothingham*. Atlan. Mo. Aug., 1916.

Military Preparedness. Continental democracies and compulsory military service. *G. G. Coulton*. Fort. Rev. July, 1916.

——— Unpreparedness demonstrated. *George Harvey*. N. Am. Rev. Aug., 1916.

National Conventions. National conventions. *George Harvey*. N. Am. Rev. July, 1916.

Poland. L'autonomie économique de la Pologne. *Stanislaus Posner*. Rev. Pol. et Parl. Août, 1916.

Prisons. Sing Sing: An evolution. *Frank Marshall White*. Atlan. Mo. Sept., 1916.

Prohibition. Prohibition and civilization. *Albert Jay Nock*. N. Am. Rev. Sept., 1916.

——— Prohibition does not prohibit. *Floyd Keeler*. Atlan. Mo., July, 1916.

——— Prohibition in Kansas. *Albert Jay Nock*. N. Am. Rev. Aug., 1916.

Proportional Representation. Proportional representation. *John H. Humphreys*. Nat'l Mun. Rev. July, 1916.

Railways. Railways and their critics. *Edwin A. Pratt*. Nine. Cen. Aug., 1916.

——— The railways, train employees and the public. *Samuel O. Dunn*. N. Am. Rev. July, 1916.

Recall. Some recent uses of the recall. *F. Stuart Fitzpatrick*. Nat'l Mun. Rev. July, 1916.

War Industries. War industries of France. *L. Levy-Bruhl*. Nine. Cent. July, 1916.

Yuan Shi Kai. The statesmanship of Yuan Shi Kai. *William Elliot Griffis*. N. Am. Rev. July, 1916.

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GENERAL REPORT OF THE COM-
MITTEE ON ACADEMIC FREEDOM
AND ACADEMIC TENURE

PRESENTED AT THE ANNUAL MEETING
OF THE ASSOCIATION

December 31, 1915

PREFATORY NOTE

At the December, 1913, meetings of the American Economic Association, the American Political Science Association, and the American Sociological Society, a joint committee of nine was constituted to consider and report on the questions of academic freedom and academic tenure, so far as these affect university positions in these fields of study. At the December, 1914, meeting of these three associations a preliminary report on the subject was presented by the joint committee.

At the meeting of the American Association of University Professors in January, 1915, it was decided to take up the problem of academic freedom in general, and the President of the Association was authorized to appoint a committee of fifteen which should include, so far as the members were eligible, this joint committee of nine. The committee was therefore constituted as follows:

Edwin R. A. Seligman, *Chairman*, Columbia University (Economics).

Richard T. Ely, University of Wisconsin (Economics).

Frank A. Fetter, Princeton University (Economics).

James P. Lichtenberger, University of Pennsylvania (Sociology).

Roscoe Pound, Harvard University (Law).

Ulysses G. Weatherly, University of Indiana (Sociology).

J. Q. Dealey, Brown University (Political Science).

Henry W. Farnam, Yale University (Political Science).

Charles E. Bennett, Cornell University (Latin).

Edward C. Elliott, University of Wisconsin (Education).

Guy Stanton Ford, University of Minnesota (History).

Charles Atwood Kofoed, University of California (Zoology).

Arthur O. Lovejoy, Johns Hopkins University (Philosophy).

Frederick W. Padelford, University of Washington (English).

Howard C. Warren, Princeton University (Psychology).

In view of the necessity of investigating an incident at the University of Pennsylvania, Professor Lichtenberger resigned

in August, 1915, and was replaced by Prof. Franklin H. Giddings. Columbia University (Sociology). Professor Elliott, having been elected Chancellor of the University of Montana, resigned in October. Professor Ford resigned in December, on account of inability to attend the meetings of the committee.

The committee of fifteen had scarcely been constituted when a number of cases of alleged infringement of academic freedom were brought to its attention. These cases were not only numerous, but also diverse in character, ranging from dismissals of individual professors to dismissal or resignation of groups of professors, and including also the dismissal of a university president, and the complaint of another university president against his board of trustees. The total number of complaints laid before the chairman of the committee during the year was eleven. As it was impossible for the committee to command the time or the amount of voluntary service necessary for dealing with all of these cases, those which seemed the most important were selected, and for each of these a sub-committee of inquiry was constituted. In the case of the University of Utah the special committee began work in April and published its report during the summer. In the case of controversies at the University of Colorado, the University of Montana, the University of Pennsylvania, and Wesleyan University, the committees of inquiry have their reports either completed or in an advanced stage of preparation. The general committee has had several meetings and has advised the committees of inquiry upon questions of principle and of method and procedure; but it has not, as a body, participated in the investigations of facts, and the committees of inquiry alone are responsible for their respective findings of fact. The general committee has, however, examined these special reports, and, accepting the findings of the sub-committees upon questions of fact, has approved their conclusions.

Three cases for which the committee was unable to secure investigating committees of this Association have been reported, after some preliminary inquiries, to the appropriate specialist societies; one case, arising at Dartmouth College, to the American Philosophical Association; one at Tulane University, to the American Physiological Society; and one at the University of Oklahoma, to the American Chemical Society.

The committee of fifteen has conceived it to be its duty to consider the problem of academic freedom as a whole and to present a report thereon. Such a report is herewith submitted.* The findings of special committees which have not already been printed will be presented in due course.

The safeguarding of a proper measure of academic freedom in American universities requires both a clear understanding of the principles which bear upon the matter, and the adoption by the universities of such arrangements and regulations as may effectually prevent any infringement of that freedom and deprive of plausibility all charges of such infringement. This report is therefore divided into two parts, the first constituting a general declaration of principles relating to academic freedom, the second presenting a group of practical proposals, the adoption of which is deemed necessary in order to place the rules and procedure of the American universities, in relation to these matters, upon a satisfactory footing.

* The committee has not hesitated to incorporate, by permission, a number of sentences from articles on the same subject published during the year by members of the committee or of the Association.

I. GENERAL DECLARATION OF PRINCIPLES

The term "academic freedom" has traditionally had two applications—to the freedom of the teacher and to that of the student, *Lehrfreiheit* and *Lernfreiheit*. It need scarcely be pointed out that the freedom which is the subject of this report is that of the teacher. Academic freedom in this sense comprises three elements: freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extra-mural utterance and action. The first of these is almost everywhere so safeguarded that the dangers of its infringement are slight. It may therefore be disregarded in this report. The second and third phases of academic freedom are closely related, and are often not distinguished. The third, however, has an importance of its own, since of late it has perhaps more frequently been the occasion of difficulties and controversies than has the question of freedom of intra-academic teaching. All five of the cases which have recently been investigated by committees of this Association have involved, at least as one factor, the right of university teachers to express their opinions freely outside the university or to engage in political activities in their capacity as citizens. The general principles which have to do with freedom of teaching in both these senses seem to the committee to be in great part, though not wholly, the same. In this report, therefore, we shall consider the matter primarily with reference to freedom of teaching within the university, and shall assume that what is said thereon is also applicable to the freedom of speech of university teachers outside their institutions, subject to certain qualifications and supplementary considerations which will be pointed out in the course of the report.

An adequate discussion of academic freedom must neces-

sarily consider three matters: (1) the scope and basis of the power exercised by those bodies having ultimate legal authority in academic affairs; (2) the nature of the academic calling; (3) the function of the academic institution or university.

1. Basis of academic authority

American institutions of learning are usually controlled by boards of trustees as the ultimate repositories of power. Upon them finally it devolves to determine the measure of academic freedom which is to be realized in the several institutions. It therefore becomes necessary to inquire into the nature of the trust reposed in these boards, and to ascertain to whom the trustees are to be considered accountable.

The simplest case is that of a proprietary school or college designed for the propagation of specific doctrines prescribed by those who have furnished its endowment. It is evident that in such cases the trustees are bound by the deed of gift, and, whatever be their own views, are obligated to carry out the terms of the trust. If a church or religious denomination establishes a college to be governed by a board of trustees, with the express understanding that the college will be used as an instrument of propaganda in the interests of the religious faith professed by the church or denomination creating it, the trustees have a right to demand that everything be subordinated to that end. If, again, as has happened in this country, a wealthy manufacturer establishes a special school in a University in order to teach, among other things, the advantages of a protective tariff, or if, as is also the case, an institution has been endowed for the purpose of propagating the doctrines of socialism, the situation is analogous. All of these are essentially proprietary institutions, in the moral sense. They do not, at least as regards one particular subject, ac-

cept the principles of freedom of inquiry, of opinion, and of teaching; and their purpose is not to advance knowledge by the unrestricted research and unfettered discussion of impartial investigators, but rather to subsidize the promotion of the opinions held by the persons, usually not of the scholar's calling, who provide the funds for their maintenance. Concerning the desirability of the existence of such institutions, the committee does not desire to express any opinion. But it is manifestly important that they should not be permitted to sail under false colors. Genuine boldness and thoroughness of inquiry, and freedom of speech, are scarcely reconcilable with the prescribed inculcation of a particular opinion upon a controverted question.

Such institutions are rare, however, and are becoming ever more rare. We still have, indeed, colleges under denominational auspices; but very few of them impose upon their trustees responsibility for the spread of specific doctrines. They are more and more coming to occupy, with respect to the freedom enjoyed by the members of their teaching bodies, the position of untrammelled institutions of learning, and are differentiated only by the natural influence of their respective historic antecedents and traditions.

Leaving aside, then, the small number of institutions of the proprietary type, what is the nature of the trust reposed in the governing boards of the ordinary institutions of learning? Can colleges and universities that are not strictly bound by their founders to a propagandist duty ever be included in the class of institutions that we have just described as being in a moral sense proprietary? The answer is clear. If the former class of institutions constitute a private or proprietary trust, the latter constitute a public trust. The trustees are trustees for the public. In the case of our state universities this is self-evident. In the case of most of our privately endowed institutions, the situation is really not different. They cannot be permitted

to assume the proprietary attitude and privilege, if they are appealing to the general public for support. Trustees of such universities or colleges have no moral right to bind the reason or the conscience of any professor. All claim to such right is waived by the appeal to the general public for contributions and for moral support in the maintenance, not of a propaganda, but of a non-partisan institution of learning. It follows that any university which lays restrictions upon the intellectual freedom of its professors proclaims itself a proprietary institution, and should be so described whenever it makes a general appeal for funds; and the public should be advised that the institution has no claim whatever to general support or regard.

This elementary distinction between a private and a public trust is not yet so universally accepted as it should be in our American institutions. While in many universities and colleges the situation has come to be entirely satisfactory, there are others in which the relation of trustees to professors is apparently still conceived to be analogous to that of a private employer to his employees; in which, therefore, trustees are not regarded as debarred by any moral restrictions, beyond their own sense of expediency, from imposing their personal opinions upon the teaching of the institution, or even from employing the power of dismissal to gratify their private antipathies or resentments. An eminent university president thus described the situation not many years since:

In the institutions of higher education the board of trustees is the body on whose discretion, good feeling, and experience the securing of academic freedom now depends. There are boards which leave nothing to be desired in these respects; but there are also numerous bodies that have everything to learn with regard to academic freedom. These barbarous boards exercise an arbitrary power of dismissal. They exclude from the teachings of the university unpopular or dangerous subjects. In some states they even treat professors' positions as common political spoils;

and all too frequently, both in state and endowed institutions, they fail to treat the members of the teaching staff with that high consideration to which their functions entitle them.*

It is, then, a prerequisite to a realization of the proper measure of academic freedom in American institutions of learning, that all boards of trustees should understand—as many already do—the full implications of the distinction between private proprietorship and a public trust.

2. The nature of the academic calling

The above-mentioned conception of a university as an ordinary business venture, and of academic teaching as a purely private employment, manifests also a radical failure to apprehend the nature of the social function discharged by the professional scholar. While we should be reluctant to believe that any large number of educated persons suffer from such a misapprehension, it seems desirable at this time to restate clearly the chief reasons, lying in the nature of the university teaching profession, why it is to the public interest that the professorial office should be one both of dignity and of independence.

If education is the corner stone of the structure of society and if progress in scientific knowledge is essential to civilization, few things can be more important than to enhance the dignity of the scholar's profession, with a view to attracting into its ranks men of the highest ability, of sound learning, and of strong and independent character. This is the more essential because the pecuniary emoluments of the profession are not, and doubtless never will be, equal to those open to the more successful members of other professions. It is not, in our opinion, desirable that men should be drawn into this profession by the magnitude of the

* From "Academic Freedom," an address delivered before the New York Chapter of the Phi Beta Kappa Society at Cornell University, May 29, 1907, by Charles William Eliot, LL.D., President of Harvard University.

economic rewards which it offers; but it is for this reason the more needful that men of high gifts and character should be drawn into it by the assurance of an honorable and secure position, and of freedom to perform honestly and according to their own consciences the distinctive and important function which the nature of the profession lays upon them.

That function is to deal at first hand, after prolonged and specialized technical training, with the sources of knowledge; and to impart the results of their own and of their fellow-specialists' investigations and reflection, both to students and to the general public, without fear or favor. The proper discharge of this function requires (among other things) that the university teacher shall be exempt from any pecuniary motive or inducement to hold, or to express, any conclusion which is not the genuine and uncolored product of his own study or that of fellow-specialists. Indeed, the proper fulfilment of the work of the professorate requires that our universities shall be so free that no fair-minded person shall find any excuse for even a suspicion that the utterances of university teachers are shaped or restricted by the judgment, not of professional scholars, but of inexperienced and possibly not wholly disinterested persons outside of their ranks. The lay public is under no compulsion to accept or to act upon the opinions of the scientific experts whom, through the universities, it employs. But it is highly needful, in the interest of society at large, that what purport to be the conclusions of men trained for, and dedicated to, the quest for truth, shall in fact be the conclusions of such men, and not echoes of the opinions of the lay public, or of the individuals who endow or manage universities. To the degree that professional scholars, in the formation and promulgation of their opinions, are, or by the character of their tenure appear to be, subject to any motive other than their own scientific conscience and a desire for the respect of their fellow-experts, to that degree the university teaching

profession is corrupted; its proper influence upon public opinion is diminished and vitiated; and society at large fails to get from its scholars, in an unadulterated form, the peculiar and necessary service which it is the office of the professional scholar to furnish.

These considerations make still more clear the nature of the relationship between university trustees and members of university faculties. The latter are the appointees, but not in any proper sense the employees, of the former. For, once appointed, the scholar has professional functions to perform in which the appointing authorities have neither competency nor moral right to intervene. The responsibility of the university teacher is primarily to the public itself, and to the judgment of his own profession; and while, with respect to certain external conditions of his vocation, he accepts a responsibility to the authorities of the institution in which he serves, in the essentials of his professional activity his duty is to the wider public to which the institution itself is morally amenable. So far as the university teacher's independence of thought and utterance is concerned—though not in other regards—the relationship of professor to trustees may be compared to that between judges of the Federal courts and the Executive who appoints them. University teachers should be understood to be, with respect to the conclusions reached and expressed by them, no more subject to the control of the trustees, than are judges subject to the control of the President, with respect to their decisions; while of course, for the same reason, trustees are no more to be held responsible for, or to be presumed to agree with, the opinions or utterances of professors, than the President can be assumed to approve of all the legal reasonings of the courts. A university is a great and indispensable organ of the higher life of a civilized community, in the work of which the trustees hold an essential and highly honorable place, but in which the faculties hold an independent place, with quite equal responsi-

bilities—and in relation to purely scientific and educational questions, the primary responsibility. Misconception or obscurity in this matter has undoubtedly been a source of occasional difficulty in the past, and even in several instances during the current year, however much, in the main, a long tradition of kindly and courteous intercourse between trustees and members of university faculties has kept the question in the background.

3. The function of the academic institution

The importance of academic freedom is most clearly perceived in the light of the purposes for which universities exist. These are three in number:

A. To promote inquiry and advance the sum of human knowledge.

B. To provide general instruction to the students.

C. To develop experts for various branches of the public service.

Let us consider each of these. In the earlier stages of a nation's intellectual development, the chief concern of educational institutions is to train the growing generation and to diffuse the already accepted knowledge. It is only slowly that there comes to be provided in the highest institutions of learning the opportunity for the gradual wresting from nature of her intimate secrets. The modern university is becoming more and more the home of scientific research. There are three fields of human inquiry in which the race is only at the beginning: natural science, social science, and philosophy and religion, dealing with the relations of man to outer nature, to his fellow men, and to the ultimate realities and values. In natural science all that we have learned but serves to make us realize more deeply how much more remains to be discovered. In social science in its largest sense, which is concerned with the relations of men in society and with the conditions of social order and well-

being, we have learned only an adumbration of the laws which govern these vastly complex phenomena. Finally, in the spiritual life, and in the interpretation of the general meaning and ends of human existence and its relation to the universe, we are still far from a comprehension of the final truths, and from a universal agreement among all sincere and earnest men. In all of these domains of knowledge, the first condition of progress is complete and unlimited freedom to pursue inquiry and publish its results. Such freedom is the breath in the nostrils of all scientific activity.

The second function—which for a long time was the only function—of the American college or university is to provide instruction for students. It is scarcely open to question that freedom of utterance is as important to the teacher as it is to the investigator. No man can be a successful teacher unless he enjoys the respect of his students, and their confidence in his intellectual integrity. It is clear, however, that this confidence will be impaired if there is suspicion on the part of the student that the teacher is not expressing himself fully or frankly, or that college and university teachers in general are a repressed and intimidated class who dare not speak with that candor and courage which youth always demands in those whom it is to esteem. The average student is a discerning observer, who soon takes the measure of his instructor. It is not only the character of the instruction but also the character of the instructor that counts; and if the student has reason to believe that the instructor is not true to himself, the virtue of the instruction as an educative force is incalculably diminished. There must be in the mind of the teacher no mental reservation. He must give the student the best of what he has and what he is.

The third function of the modern university is to develop experts for the use of the community. If there is one thing that distinguishes the more recent developments of dem-

and the natural sciences. In more recent times the danger zone has been shifted to the political and social sciences—though we still have sporadic examples of the former class of cases in some of our smaller institutions. But it is precisely in these provinces of knowledge in which academic freedom is now most likely to be threatened, that the need for it is at the same time most evident. No person of intelligence believes that all of our political problems have been solved, or that the final stage of social evolution has been reached. Grave issues in the adjustment of men's social and economic relations are certain to call for settlement in the years that are to come; and for the right settlement of them mankind will need all the wisdom, all the good will, all the soberness of mind, and all the knowledge drawn from experience, that it can command. Towards this settlement the university has potentially its own very great contribution to make; for if the adjustment reached is to be a wise one, it must take due account of economic science, and be guided by that breadth of historic vision which it should be one of the functions of a university to cultivate. But if the universities are to render any such service towards the right solution of the social problems of the future, it is the first essential that the scholars who carry on the work of universities shall not be in a position of dependence upon the favor of any social class or group, that the disinterestedness and impartiality of their inquiries and their conclusions shall be, so far as is humanly possible, beyond the reach of suspicion.

The special dangers to freedom of teaching in the domain of the social sciences are evidently two. The one which is the more likely to affect the privately endowed colleges and universities is the danger of restrictions upon the expression of opinions which point towards extensive social innovations, or call in question the moral legitimacy or social expediency of economic conditions or commercial practices in which large vested interests are involved. In the politi-

cal, social, and economic field almost every question, no matter how large and general it at first appears, is more or less affected with private or class interests; and, as the governing body of a university is naturally made up of men who through their standing and ability are personally interested in great private enterprises, the points of possible conflict are numberless. When to this is added the consideration that benefactors, as well as most of the parents who send their children to privately endowed institutions, themselves belong to the more prosperous and therefore usually to the more conservative classes, it is apparent that, so long as effectual safeguards for academic freedom are not established, there is a real danger that pressure from vested interests may, sometimes deliberately and sometimes unconsciously, sometimes openly and sometimes subtly and in obscure ways, be brought to bear upon academic authorities.

On the other hand, in our state universities the danger may be the reverse. Where the university is dependent for funds upon legislative favor, it has sometimes happened that the conduct of the institution has been affected by political considerations; and where there is a definite governmental policy or a strong public feeling on economic, social, or political questions, the menace to academic freedom may consist in the repression of opinions that in the particular political situation are deemed ultra-conservative rather than ultra-radical. The essential point, however, is not so much that the opinion is of one or another shade, as that it differs from the views entertained by the authorities. The question resolves itself into one of departure from accepted standards; whether the departure is in the one direction or the other is immaterial.

This brings us to the most serious difficulty of this problem; namely, the dangers connected with the existence in a democracy of an overwhelming and concentrated public opinion. The tendency of modern democracy is for men to

think alike, to feel alike, and to speak alike. Any departure from the conventional standards is apt to be regarded with suspicion. Public opinion is at once the chief safeguard of a democracy, and the chief menace to the real liberty of the individual. It almost seems as if the danger of despotism cannot be wholly averted under any form of government. In a political autocracy there is no effective public opinion, and all are subject to the tyranny of the ruler; in a democracy there is political freedom, but there is likely to be a tyranny of public opinion.

An inviolable refuge from such tyranny should be found in the university. It should be an intellectual experiment station, where new ideas may germinate and where their fruit, though still distasteful to the community as a whole, may be allowed to ripen until finally, perchance, it may become a part of the accepted intellectual food of the nation or of the world. Not less is it a distinctive duty of the university to be the conservator of all genuine elements of value in the past thought and life of mankind which are not in the fashion of the moment. Though it need not be the "home of beaten causes," the university is, indeed, likely always to exercise a certain form of conservative influence. For by its nature it is committed to the principle that knowledge should precede action, to the caution (by no means synonymous with intellectual timidity) which is an essential part of the scientific method, to a sense of the complexity of social problems, to the practice of taking long views into the future, and to a reasonable regard for the teachings of experience. One of its most characteristic functions in a democratic society is to help make public opinion more self-critical and more circumspect, to check the more hasty and unconsidered impulses of popular feeling, to train the democracy to the habit of looking before and after. It is precisely this function of the university which is most injured by any restriction upon academic freedom; and it is precisely those who most value this aspect of the univer-

sity's work who should most earnestly protest against any such restriction. For the public may respect, and be influenced by, the counsels of prudence and of moderation which are given by men of science, if it believes those counsels to be the disinterested expression of the scientific temper and of unbiased inquiry. It is little likely to respect or heed them if it has reason to believe that they are the expression of the interests, or the timidities, of the limited portion of the community which is in a position to endow institutions of learning, or is most likely to be represented upon their boards of trustees. And a plausible reason for this belief is given the public so long as our universities are not organized in such a way as to make impossible any exercise of pressure upon professorial opinions and utterances by governing boards of laymen.

Since there are no rights without corresponding duties, the considerations heretofore set down with respect to the freedom of the academic teacher entail certain correlative obligations. The claim to freedom of teaching is made in the interest of the integrity and of the progress of scientific inquiry; it is, therefore, only those who carry on their work in the temper of the scientific inquirer who may justly assert this claim. The liberty of the scholar within the university to set forth his conclusions, be they what they may, is conditioned by their being conclusions gained by a scholar's method and held in a scholar's spirit; that is to say, they must be the fruits of competent and patient and sincere inquiry, and they should be set forth with dignity, courtesy, and temperateness of language. The university teacher, in giving instruction upon controversial matters, while he is under no obligation to hide his own opinion under a mountain of equivocal verbiage, should, if he is fit for his position, be a person of a fair and judicial mind; he should, in dealing with such subjects, set forth justly, without suppression or innuendo, the divergent opinions of other investigators; he should cause his students to become familiar with the best published expressions

of the great historic types of doctrine upon the questions at issue; and he should, above all, remember that his business is not to provide his students with ready-made conclusions, but to train them to think for themselves, and to provide them access to those materials which they need if they are to think intelligently.

It is, however, for reasons which have already been made evident, inadmissible that the power of determining when departures from the requirements of the scientific spirit and method have occurred, should be vested in bodies not composed of members of the academic profession. Such bodies necessarily lack full competency to judge of those requirements; their intervention can never be exempt from the suspicion that it is dictated by other motives than zeal for the integrity of science; and it is, in any case, unsuitable to the dignity of a great profession that the initial responsibility for the maintenance of its professional standards should not be in the hands of its own members. It follows that university teachers must be prepared to assume this responsibility for themselves. They have hitherto seldom had the opportunity, or perhaps the disposition, to do so. The obligation will doubtless, therefore, seem to many an unwelcome and burdensome one; and for its proper discharge members of the profession will perhaps need to acquire, in a greater measure than they at present possess it, the capacity for impersonal judgment in such cases, and for judicial severity when the occasion requires it. But the responsibility cannot, in this committee's opinion, be rightfully evaded. If this profession should prove itself unwilling to purge its ranks of the incompetent and the unworthy, or to prevent the freedom which it claims in the name of science from being used as a shelter for inefficiency, for superficiality, or for uncritical and intemperate partisanship, it is certain that the task will be performed by others—by others who lack certain essential qualifications for performing it, and whose action

is sure to breed suspicions and recurrent controversies deeply injurious to the internal order and the public standing of universities. Your committee has, therefore, in the appended "Practical Proposals" attempted to suggest means by which judicial action by representatives of the profession, with respect to the matters here referred to, may be secured.

There is one case in which the academic teacher is under an obligation to observe certain special restraints—namely, the instruction of immature students. In many of our American colleges, and especially in the first two years of the course, the student's character is not yet fully formed, his mind is still relatively immature. In these circumstances it may reasonably be expected that the instructor will present scientific truth with discretion, that he will introduce the student to new conceptions gradually, with some consideration for the student's preconceptions and traditions, and with due regard to character-building. The teacher ought also to be especially on his guard against taking unfair advantage of the student's immaturity by indoctrinating him with the teacher's own opinions before the student has had an opportunity fairly to examine other opinions upon the matters in question, and before he has sufficient knowledge and ripeness of judgment to be entitled to form any definitive opinion of his own. It is not the least service which a college or university may render to those under its instruction, to habituate them to looking not only patiently but methodically on both sides, before adopting any conclusion upon controverted issues. By these suggestions, however, it need scarcely be said that the committee does not intend to imply that it is not the duty of an academic instructor to give to any students old enough to be in college a genuine intellectual awakening and to arouse in them a keen desire to reach personally verified conclusions upon all questions of general concernment to mankind, or of special significance for their own

time. There is much truth in some remarks recently made in this connection by a college president:

Certain professors have been refused reelection lately, apparently because they set their students to thinking in ways objectionable to the trustees. It would be well if more teachers were dismissed because they fail to stimulate thinking of any kind. We can afford to forgive a college professor what we regard as the occasional error of his doctrine, especially as we may be wrong, provided he is a contagious center of intellectual enthusiasm. It is better for students to think about heresies than not to think at all; better for them to climb new trails, and stumble over error if need be, than to ride forever in upholstered ease in the overcrowded highway. It is a primary duty of a teacher to make a student take an honest account of his stock of ideas, throw out the dead matter, place revised price marks on what is left, and try to fill his empty shelves with new goods.*

It is, however, possible and necessary that such intellectual awakening be brought about with patience, considerateness and pedagogical wisdom.

There is one further consideration with regard to the class-room utterances of college and university teachers to which the committee thinks it important to call the attention of members of the profession, and of administrative authorities. Such utterances ought always to be considered privileged communications. Discussions in the class room ought not to be supposed to be utterances for the public at large. They are often designed to provoke opposition or arouse debate. It has, unfortunately, sometimes happened in this country that sensational newspapers have quoted and garbled such remarks. As a matter of common law, it is clear that the utterances of an academic instructor are privileged, and may not be published, in whole or part, without his authorization. But our practice, unfortunately, still differs from that of foreign countries,

* President William T. Foster in *The Nation*, November 11, 1915.

and no effective check has in this country been put upon such unauthorized and often misleading publication. It is much to be desired that test cases should be made of any infractions of the rule.*

In their extra-mural utterances, it is obvious that academic teachers are under a peculiar obligation to avoid hasty or unverified or exaggerated statements, and to refrain from intemperate or sensational modes of expression. But, subject to these restraints, it is not, in this committee's opinion, desirable that scholars should be debarred from giving expression to their judgments upon controversial questions, or that their freedom of speech, outside the university, should be limited to questions falling within their own specialities. It is clearly not proper that they should be prohibited from lending their active support to organized movements which they believe to be in the public interest. And, speaking broadly, it may be said in the words of a non-academic body already once quoted in a publication of this Association, that "it is neither possible nor desirable to deprive a college professor of the political rights vouchsafed to every citizen."†

It is, however, a question deserving of consideration by members of this Association, and by university officials, how far academic teachers, at least those dealing with political, economic and social subjects, should be prominent in the management of our great party organizations, or should be candidates for state or national offices of a dis-

* The leading case is *Abernethy vs. Hutchinson*, 3 L. J., Ch. 209. In this case where damages were awarded the court held as follows. "That persons who are admitted as pupils or otherwise to hear these lectures, although they are orally delivered and the parties might go to the extent, if they were able to do so, of putting down the whole by means of shorthand, yet they can do that only for the purpose of their own information and could not publish, for profit, that which they had not obtained the right of selling."

† Report of the Wisconsin State Board of Public Affairs, December 1914.

tinently political character. It is manifestly desirable that such teachers have minds untrammelled by party loyalties, unexcited by party enthusiasms, and unbiased by personal political ambitions; and that universities should remain uninvolved in party antagonisms. On the other hand, it is equally manifest that the material available for the service of the State would be restricted in a highly undesirable way, if it were understood that no member of the academic profession should ever be called upon to assume the responsibilities of public office. This question may, in the committee's opinion, suitably be made a topic for special discussion at some future meeting of this Association, in order that a practical policy, which shall do justice to the two partially conflicting considerations that bear upon the matter, may be agreed upon.

It is, it will be seen, in no sense the contention of this committee that academic freedom implies that individual teachers should be exempt from all restraints as to the matter or manner of their utterances, either within or without the university. Such restraints as are necessary should in the main, your committee holds, be self-imposed, or enforced by the public opinion of the profession. But there may, undoubtedly, arise occasional cases in which the aberrations of individuals may require to be checked by definite disciplinary action. What this report chiefly maintains is that such action can not with safety be taken by bodies not composed of members of the academic profession. Lay governing boards are competent to judge concerning charges of habitual neglect of assigned duties, on the part of individual teachers, and concerning charges of grave moral delinquency. But in matters of opinion, and of the utterance of opinion, such boards can not intervene without destroying, to the extent of their intervention, the essential nature of a university—without converting it from a place dedicated to openness of mind, in which

• the conclusions expressed are the tested conclusions of trained scholars, into a place barred against the access of new light, and precommitted to the opinions or prejudices of men who have not been set apart or expressly trained for the scholar's duties. It is, in short, not the absolute freedom of utterance of the individual scholar, but the absolute freedom of thought, of inquiry, of discussion and of teaching, of the academic profession, that is asserted by this declaration of principles. It is conceivable that our profession may prove unworthy of its high calling, and unfit to exercise the responsibilities that belong to it. But it will scarcely be said as yet to have given evidence of such unfitness. And the existence of this Association, as it seems to your committee, must be construed as a pledge, not only that the profession will earnestly guard those liberties without which it can not rightly render its distinctive and indispensable service to society, but also that it will with equal earnestness seek to maintain such standards of professional character, and of scientific integrity and competency, as shall make it a fit instrument for that service.

II. PRACTICAL PROPOSALS

As the foregoing declaration implies, the ends to be accomplished are chiefly three:

First: To safeguard freedom of inquiry and of teaching against both covert and overt attacks, by providing suitable judicial bodies, composed of members of the academic profession, which may be called into action before university teachers are dismissed or disciplined, and may determine in what cases the question of academic freedom is actually involved.

Second: By the same means, to protect college executives and governing boards against unjust charges of infringement of academic freedom, or of arbitrary and dictatorial conduct—charges which, when they gain wide currency and belief, are highly detrimental to the good repute and the influence of universities.

Third: To render the profession more attractive to men of high ability and strong personality by insuring the dignity, the independence, and the reasonable security of tenure, of the professorial office.

The measures which it is believed to be necessary for our universities to adopt to realize these ends—measures which have already been adopted in part by some institutions—are four:

A. *Action by Faculty Committees on Reappointments.* Official action relating to reappointments and refusals of reappointment should be taken only with the advice and consent of some board or committee representative of the faculty. Your committee does not desire to make at this time any suggestion as to the manner of selection of such boards.

B. *Definition of Tenure of Office.* In every institution

there should be an unequivocal understanding as to the term of each appointment; and the tenure of professorships and associate professorships, and of all positions above the grade of instructor after ten years of service, should be permanent (subject to the provisions hereinafter given for removal upon charges). In those state universities which are legally incapable of making contracts for more than a limited period, the governing boards should announce their policy with respect to the presumption of reappointment in the several classes of position, and such announcements, though not legally enforceable, should be regarded as morally binding. No university teacher of any rank should, except in cases of grave moral delinquency, receive notice of dismissal or of refusal of reappointment, later than three months before the close of any academic year, and in the case of teachers above the grade of instructor, one year's notice should be given.

C. *Formulation of Grounds for Dismissal.* In every institution the grounds which will be regarded as justifying the dismissal of members of the faculty should be formulated with reasonable definiteness; and in the case of institutions which impose upon their faculties doctrinal standards of a sectarian or partisan character, these standards should be clearly defined and the body or individual having authority to interpret them, in case of controversy, should be designated. Your committee does not think it best at this time to attempt to enumerate the legitimate grounds for dismissal, believing it to be preferable that individual institutions should take the initiative in this.

D. *Judicial Hearings Before Dismissal.* Every university or college teacher should be entitled, before dismissal* or demotion, to have the charges against him stated in

* This does not refer to refusals of reappointment at the expiration of the terms of office of teachers below the rank of associate professor. All such questions of reappointment should, as above provided, be acted upon by a faculty committee.

writing in specific terms and to have a fair trial on those charges before a special or permanent judicial committee chosen by the faculty senate or council, or by the faculty at large. At such trial the teacher accused should have full opportunity to present evidence, and, if the charge is one of professional incompetency, a formal report upon his work should be first made in writing by the teachers of his own department and of cognate departments in the university, and, if the teacher concerned so desire, by a committee of his fellow specialists from other institutions, appointed by some competent authority.

The above declaration of principles and practical proposals are respectfully submitted by your committee to the approval of the Association, with the suggestion that, if approved, they be recommended to the consideration of the faculties, administrative officers, and governing boards of the American universities and colleges.

EDWIN R. A. SELIGMAN, *Chairman*,
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 Princeton University.
 ULYSSES G. WEATHERLY,
 University of Indiana.

At the annual meeting of the American Association of University Professors held in Washington, D. C., on January 1, 1916, it was moved and carried that the report of the Committee on Academic Freedom and Academic Teuure be accepted and approved.

JOHN DEWEY, *President.*
 A. O. LOVEJOY, *Secretary*

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 ANDREWS, MRS. JOHN B., 131 East 23d St., New York City.
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 ARMSTRONG, DR. S. T., Katonah, N. Y.
 ASAKAWA, K., Yale University, New Haven, Conn.

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BARLOW, MR. B. E., Coldwater, Mich.
BARNARD, J. LYNN, Lansdowne, Pa.
BARNETT, JAMES D., University of Oregon, Eugene, Ore.
BARNETT, JAMES F., 126 N. Lafayette St., Grand Rapids, Mich.
BARNUM, WM. M., 10 Wall St., New York City.
BARRETT, JOHN, Pan American Union, Washington, D. C.
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HARTSHORNE, CHARLES H., 239 Washington St., Jersey City, N. J.
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HASKINS, CHARLES H., 23 University Hall, Harvard University, Cambridge, Mass.
HASSE, A. R., 476 Fifth Ave., New York City.
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HERING, H. B., 2808 Guilford Ave., Baltimore, Md.

- HERSHEY, A. S., Indiana State University, Bloomington, Ind.
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 HIBBEN, PAXTON, 5433 University St., Indianapolis, Ind.
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KOHLE, MAX J., 52 William St., New York City.
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KREBS, H. J., 806 Franklin St., Wilmington, Del.
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McKENDRICKS, NORMAN S., Phillips Academy, Exeter, N. H.
McKENNA, MARTIN, 95 Tillinghast Place, Buffalo, N. Y.
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MACLEAN, J. A., University of Manitoba, Winnipeg, Manitoba, Canada.
McLEOD, S. C., New York University, Washington Sq., New York City.
McMAHON, FULTON, 165 Broadway, New York City.
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McMILLAN, OLIVE G., The Industrial Commission of Ohio, Columbus, Ohio.
McMYNN, ROBERT M., 498 Terrace Ave., Milwaukee, Wis.
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